Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 725.

STANDARD OIL COMPANY OF NEW JERSEY ET AL.,
Appellants,

against

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLANTS.

VOLUME II.—FACTS.

JOHN G. JOHNSON,
JOHN G. MILBURN,
FRANK L. CRAWFORD,
Of Counsel.

M. F. ELLIOTT,
MARTIN CAREY,
Solicitors for Appellants,
26 BROADWAY,
Borough of Manhattan,
New York City.

TABLE OF CONTENTS.

CHAPTER I.

PAGE

First: Analysis of parties 1
List of Appellants according to status in 1899 5
Second: Brief statement as to origin of Standard Oil properties 10

CHAPTER II.

Outline of the Standard Oil Organization. 11

CHAPTER III.

Origin, Development and Ownership of the Standard Oil Business and Properties Down to 1882. 13

First: Early conditions in the oil industry 13
Uncertainty as to the supply of crude oil 13
Fluctuations in production 13
Fluctuations in prices 14
Over-production of refineries 15
Second: The rise of the Standard Oil Company and the development of its business down to the Trust Agreement of 1882 17
Early history prior to 1870 17
Organization of the Standard Oil Co. of Ohio, in 1870 19
Purchase of Cleveland refineries, in 1871–1872 19
Expansion on the manufacturing side of the Standard Oil business subsequent to 1872 21
Empire Transportation Co. properties 24
Extension of domestic marketing business 26
Acquisition of lubricating oil refineries 27

PAGE

Early pipe lines: (See also pp. 92–95; 107–126)---- 29
Purchases of, 1874–1877---- 29
New construction of, by Standard---- 31
Storage of surplus crude oil (See also p. 89)---- 31
Third: Ownership of Standard properties down to 1882.. 34
Stocks and properties as acquired held by individuals as trustees prior to 1879---- 34
Vilas, Keith & Chester Agreement---- 36
Fourth: Trust Agreement of 1882---- 39

CHAPTER IV.

Early Contracts With Railroads. 42

South Improvement Co. contract---- 43
Terminal contracts with Erie and N. Y. Central railroads.. 44
Railroad pooling agreement of 1874---- 47
Contract with Pennsylvania Railroad of October 17th, 1877---- 52
Arrangement between American Transfer Co. and Pennsylvania R. R. Co.---- 53

CHAPTER V.

Early Concessions in Freight Rates. 56

Concessions from trunk lines in 1878---- 57

CHAPTER VI.

From the Formation of the Standard Oil Trust in 1882 to the Date of the Sherman Act, July 2, 1890. 59

Companies organized by Trustees, 1882–1890---- 60
Refining and marketing companies---- 60
Pipe line companies---- 60
Table showing appellant companies and properties as held 1890 and 1906---- 62

CHAPTER VII.

PAGE

From July 2nd, 1890, to 1899. 62

First: Dissolution of Standard Oil Trust..... 62
List of twenty principal companies..... 64
Second: No competition, 1892–1899..... 66

CHAPTER VIII.

Transfer of Stocks to Standard Oil Company of New Jersey. 69

CHAPTER IX.

Analysis of Acquisitions. 71

First: Objections to Government's table of acquisitions... 71
Second: Explanation of Defendants' table of acquisitions. 72
Table of Acquisitions, Appendix I..... 247

CHAPTER X.

Failure to Show Acts Involving Monopolistic Exclusion. 74

First: As to the acquisition of competing properties 74
Second: Relations with Tide-Water Companies..... 75
Third: Charges relating to Pure Oil Co. interests 78
United States Pipe Line Co..... 78
Alleged price manipulation in 1892–1895 79
Matter of Philip Poth, in Germany..... 82
Fourth: Agreement with refining companies in 1903..... 83
Fifth: Agreements of 1884, between National Transit Co. and Pennsylvania R. R. Co..... 84
Sixth: Florence Oil & Refining Co. and United Oil Co. .. 86
Seventh: Alleged contracts in restraint of trade..... 86
Producers' agreement of October, 1887..... 86
California contracts..... 86

CHAPTER XI.

PAGE

Reasons for the Remarkable Success of the Standard Oil Business. 88

First: Means for ensuring a constant and adequate supply of crude oil 88
Liberal purchases of crude (see also p. 111) 88
Over-production of crude 88
Exhaustion of oil fields 89
Storage of crude surplus (See also pp. 31–32) 89
Cost of storage 90
Refractory crudes, special processes for refining 91
Lima crude 91
California crude 91
Extension of pipe lines to new fields (See also pp. 29–33) 92
Second: Growth and present extent of Defendants' pipe line system 94
Third: Extensive, up-to-date refineries 95
Fourth: Extension of markets, domestic and foreign 96
Introduction of marketing stations 96
Amount of foreign competition 97

CHAPTER XII.

Competitors; Their Growth and Profitable Expansion. 99

First: Production 99
Chart showing total production and Standard's proportion 1882-1906 99
Second: Manufacture 100
Increase of competitive refineries 100
Consumption of crude by competitors and increase of their products 101
Recent continued growth of competitors 103
Third: Extension of business to new markets 104
Fourth: Pipe line building by competitors 105
Fifth: Integration of competitors 105
Sixth: Profits of competitors 106

CHAPTER XIII.

Pipe Lines.

PAGE

Charge of Monopolizing Through "Control" of Pipe Lines Entirely Unsupported 170

(See also pp. 29–32; 92–95.)

First: Private pipe lines 107
Prairie Oil and Gas Co. 107
Ohio Oil Co. 107
Standard Oil Co. of New Jersey 108
Standard Oil Co. of California 109
Second: Classification of common carrier pipe lines 110
Gathering lines 110
Crude oil purchases (See also p. 88) 111
Crude oil prices 111
Trunk lines 113
Third: Defendants have not exacted excessive, unreasonable or discriminatory rates 114
Fourth: Common carrier pipe lines of defendant companies related parts of a single organic system 115
Manner and cause of growth of this system 115
Reasons for existence of separate pipe line companies 115
Crescent Pipe Line Co. 117
Fifth: Defendant pipe line companies, which are common carriers, have complied with the requirements of the Interstate Commerce Act 118
Sixth: Pipe line tariffs do not impose unreasonable conditions as to quantity 121
Seventh: Large shipments necessitated by contamination arising from moving batches of crude oil of different gravities in the same pipe line 123

CHAPTER XIV.

PAGE

Prices 127

First: No unreasonable advance in Defendants' average prices 127
Explanation of "Relative Prices" 127
Government's chart of "Relative Prices" 127
Chart comparing prices of water white oil and other commodities in 1895 and 1906 128
Chart comparing course of average prices of water white oil and of general commodities for whole period from 1895 to 1906 131
Chart comparing Defendants' average prices of refined oil and the prices of general commodities with the prices of crude oil, from 1895 to 1906 133
No real increase in Defendants' prices from 1895 to 1906, when the change in the purchasing power of money is considered 135
Second: Variation in Defendants' prices or margins of profit at different points in the United States 139

CHAPTER XV.

Profits 145

First: Government's method of estimating profits unsound 145
Second: Standard's total net profits, as shown by the ratio of its total net earnings to the total net assets, year by year, have been reasonable 146
Table of net assets, net earnings and percentage of profits and dividends 147
Third: Defendants' profits on domestic sale of refined oil but a small part of Defendants' total profits, and relatively inconsiderable 149
Table showing comparative increase in the amounts of refined oil and of by-products manufactured by Defendants 151
Table showing deductions to be made from "total net assets" and "total net profits" 155

PAGE

Table showing net profits on domestic sales of illuminating oil 156
Profits of foreign companies 156
Fourth: Increase of total net profits in recent years due to increased sales of by-products at higher prices 159
Naphtha sales and prices 160
Increase of profits per barrel of crude 161
Fifth: Profits of individual domestic companies 163
Profits of Standard Oil Co. of Indiana 163
Opposing testimony as to "reasonable rate of profit" 168

CHAPTER XVI.

Alleged Unfair Methods of Competition 170

Incompetency of Testimony for Petitioner and Failure to prove Exhibits 170–73
Local Price Cutting 173
General conclusion from the evidence 175
Specific instances 176
Standard's policy and general practice in local price cutting 178
No competitor's business destroyed 180
Reports of Competitors' Shipments:
Method of obtaining information 182
Use made of information 184
No countermand of competitors' orders by means of such information 185
No cutting local prices at destination of competitive shipments 186
No cutting prices to consignees of competitors' shipments 186
Operation of Bogus Independent Companies 187
Wholesale marketing concerns operated by defendants 187
Purchased and operated for the good-will, etc. 187
Organized and operated for special purposes 189
Retail marketing concerns operated by defendants 191
Can peddling departments 191

PAGE
Various peddling concerns 192
Independent peddlers 192–3
Payment of Rebates on Oil Prices 194
Miscellaneous Subjects Not Specified in the pleadings ... 197

CHAPTER XVII.

Railroad Freight Rates.

The Government's contention 201
The rights of a shipper :
At common law 201
Under the statute 202
The impossibility of a general conspiracy as charged 202
Chicago-Whiting-East St. Louis rates 205
6c. rate used by Standard filed with the Commission and the regularly established rate of seven railroads 205–6
Judicially established that there was no 18c. rate 207
Reasons why an 18c. rate was never intended to be established 208
6c. rate not secret 209
Supposed Discriminations into the South 211
The 13c. rate to Grand Junction lawful 211
Southern Railway rates lawfully used 213
8½c. Evansville rates, why issued and why not filed with the Commission 215
Universal railroad custom of use of sum of locals 216
Explanation of way-billing at 11c. 217
Authority for use of 6c. rate 218
Comparison of rates into South from Whiting and from Ohio refining points 219
Olean-Vermont Situation 219
History and explanation of rates used 219
The 26½c. rate Olean to Norwood 220
Prosecutions against the New York Central and against the Standard do not establish the 26½c. rate 221
The Norwood-Burlington rate lawfully used 222
Words "not to be posted" on state tariffs do not denote secrecy 223

PAGE
"Blind-billing" does not signify secrecy 224
Why tariffs were issued for "Account of" a particular shipper 225
Explanation of Vermont state rates used in combination with rates to Burlington 225
The supposed New England non-probate 226
Explanation of existing rates 226
Explanation of want of through rates to points on the New Haven Road 228
Oil rates in Central States 229
General low basis of rates from Chicago 230
Government's error as to actual rates 230
Differences in rates due to geographical causes and not to Standard influence 230
Explanation of differences in east and west bound rates between Whiting and Toledo 231
70% of Standard's business done at the rates complained of 232
Miscellaneous instances of supposed discriminations 232

CHAPTER XVIII.

Alleged Monopolization by Galena Signal Oil Co. of Trade in Lubricating Oils Supplied to Railroads. 237

First: General Statement 237
Second: Great success of the Galena oils due to their superiority and to improved methods 238
Superiority of Galena oils 238
Improved Galena methods of lubrication 239
Saving in cost of lubrication due to Galena oils 240
Third: Galena contract one for the sale of lubrication at a maximum cost per unit of service, and not for the sale of oil at a price per gallon 241
Fourth: Variations in maximum guaranties inevitable 243
Apparent low prices per gallon paid by railroads of Pennsylvania System due to extravagance in use of oil 244

APPENDIX I.

Table of Acquisitions.

PAGE

Refineries 247
Part I: Refineries wholly acquired 247
Part II: Refining companies only a majority of whose stock is owned 255
Marketing concerns 256
Part I: Those acquired otherwise than entirely for cash 256
Part II: Those purchased entirely for cash 257
Pipe line companies 261

APPENDIX II.

List of marketing stations having small populations 263

APPENDIX III.

List of Competitive Refineries 266

CHAPTER I.

FIRST: ANALYSIS OF PARTIES.

I. Section 2 of the decree of the Circuit Court names 38 corporate defendants as being parties to the combination which the decree adjudges to exist (*a*). As to all other corporate defendants, it is adjudged by section 3 of the decree that they " have not been proved to be engaged in the operation or carrying out of the combination, and the bill is dismissed as against them " (*b*). Though the Court assigns no more specific reasons for such dismissal, it may be assumed, as to a part of said defendants mentioned in said section 3, that the following reasons controlled: Seven of them were natural gas companies not now or ever owned by any of the Standard Oil companies; nine others were natural gas companies owned by certain of the Standard Oil companies, but not in any way connected with the oil business; ten others are companies which were liquidated and ceased to exist before the filing of the petition herein. As to the remaining defendants in said section 3 mentioned, it must be presumed that the dismissal of the bill was upon the merits. They are:

Florence Oil & Refining Co.

United Oil Co.

Tidewater Oil Co.

Tide Water Pipe Co. (Ltd).

Platt & Washburn Refining Co. (Owned by the Tidewater Oil Co.)

Franklin Pipe Co.

Pennsylvania Oil Co.

(*a*) Record, Vol. A., p. 526.

(*b*) Record, Vol. A., p. 526–7.

II. Of the thirty-eight corporate defendants named in section 2 of the decree and as to which the judgment of the Court applies, four have not appealed, to wit:

Corsicana Refining Co.

Manhattan Oil Co.

Security Oil Co.

Waters-Pierce Oil Co.,

and one, the Standard Oil Co. of Iowa, has been liquidated and no longer exists.

There remain, therefore, the following thirty-three existing companies adjudged to be parties to the said combination and which are appellants here, to wit:

Anglo-American Oil Company (Limited), Atlantic Refining Company, Buckeye Pipe Line Company, Borne-Scrymser Company, Chesebrough Manufacturing Company, Consolidated, Cumberland Pipe Line Company, Colonial Oil Company, Continental Oil Company, Crescent Pipe Line Company, Eureka Pipe Line Company, Galena Signal Oil Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Ohio Oil Company, Prairie Oil and Gas Company, Solar Refining Company, Southern Pipe Line Company, South Penn Oil Company, Southwest Pennsylvania Pipe Lines (described herein as Southwest Pennsylvania Pipe Lines Company), Standard Oil Company, of California, Standard Oil Company, of Indiana, Standard Oil Company of Kansas, Standard Oil Company, of Kentucky, Standard Oil Company, of Nebraska, Standard Oil Company, of New York, Standard Oil Company, of Ohio, Swan and Finch Company, Union Tank Line Company, Vacuum Oil Company, Washington Oil Company.

III. To these should be added the individual defendants, all of whom have appealed, to wit: John D. Rockefeller, William Rockefeller, Henry H. Rogers, Henry M. Flagler, John D. Archbold, Oliver H. Payne, Charles M. Pratt.

IV. The Court, in effect, finds that, prior to 1899, the Standard Oil interests comprised twenty principal companies, which also held all the stock of many, and a majority of the stock of some, other subsidiary corporations (*a*). Of the thirty-three companies appellants here, when analyzed with reference to this finding, it appears that four were organized after 1899, two of them by the Standard Oil Co. of New Jersey, to wit: Colonial Oil Co. (1901), and the Standard Oil Co. of Nebraska (1906); and two of them by the National Transit Co., to wit: Cumberland Pipe Line Co. (1901), and the Prairie Oil and Gas Co. (1900). In the case of each of these companies, the entire capital stock was subscribed for and paid for in cash by the company organizing the same. One appellant company, the Standard Oil Co. of California, was purchased outright for cash in 1900 by the Standard Oil Co. of New Jersey.

Of the twenty-eight appellant companies remaining, sixteen of them, which were among the twenty principal companies in 1899, and three others, whose stocks were held in 1899 by one of the twenty principal companies, were originally organized at the instance either of the Trustees of the Standard Oil Trust or of one of the twenty principal companies, and their entire capital stock was taken and paid for either with cash or with property, by the said Trustees or by such company. One other appellant company, the Continental Oil Co., was organized at the instance of the Trustees about 1885, and all of its capital stock was subscribed and paid for by them, except a small minority, which was purchased in 1892. Thus twenty-four out of thirty-three existing appellant companies are substantially the creation of Standard Oil interests, but were separately organized by reason of the requirements of the laws of the various States and of Great Britain. At least fifteen of these twenty-four were so created prior to July, 1890, and four of them after 1899. In the case of four of the nine

---

(*a*) Record, Vol. A., p. 527, 575.

appellant companies not created by Standard Oil interests, the entire capital stock was purchased outright for cash.

At least thirteen of the appellant companies created by Standard Oil capital do not and never did own a dollar's worth of property derived from an independent source—they are:

Anglo-American Oil Co. (Ltd.)	N. Y. Transit Co.
Buckeye Pipe Line Co.	Northern Pipe Line Co.
Colonial Oil Co.	Prairie Oil and Gas Co.
Cumberland Pipe Line Co.	Southern Pipe Line Co.
Eureka Pipe Line Co.	Southwest Penn. Pipe Lines
Indiana Pipe Line Co.	Standard Oil Co. of Kansas.

Standard Oil Co. of Nebraska.

At least four others of the appellant companies which were also created by Standard capital, own only small amounts of property derived from independent sources, viz:

Union Tank Line Co.	Some tank cars;
Standard Oil Co. of Indiana	Some marketing stations.
Continental Oil Co.	Some marketing stations;
Solar Refining Co.	Small refinery.

Three other of the appellant companies are producing companies, to wit:

Ohio Oil Co. (also purchases crude.)

South Penn Oil Co.

Washington Oil Co.

No charge of unfair or improper conduct was made in the petition or proved on the hearing concerning any producing companies. Charges of monopoly against the Defendants based upon the production of crude oil are baseless, in view of the fact that the Defendants in 1906 produced only 11 per cent. of the total crude produced in the United States (a).

These matters are set forth in detail in the following table, where the authorities are given:

(a) Def. Ex. 966, Vol. 19, p. 626; Record, Vol. A., p. 576.

LIST OF APPELLANTS ANALYZED ACCORDING TO STATUS IN 1899.

Included among 20 principal companies in 1899.	Included among subsidiary companies in 1899 or thereafter organized. Now held directly by S. O. Co. of N. J.	Organized by Standard interests? Or acquired and when?	Holds property derived from independent sources.	Remarks.
Standard Oil Co. of N. J. Refining Company.		Orgd. by trustees in 1882.		Trustees took all original stock and increase prior to 1899. (19 : 633).
	Southwest Penn. Pipe Lines.	Orgd. by Nat. Trans. Co. in 1885.	No.	Nat. Trans. Co. took all stock and transfd. same to S. O. Co. of N. J. Dec. 31, 1905. (19 : 641 ; 7 : 4).
	Standard Oil Co. of Kansas. Refining company.	Orgd. by S. O. Co. of Ky. in 1892.	No.	993 shares stock transfd. to S. O. Co. of N. J. by S. O. Co. of Ky. prior to 1899. 9,000 shares issued thereafter directly to S. O. Co. of N. J. (19 : 635; 7 : 4).
	Colonial Oil Co. Marketing in certain foreign countries.	Orgd. by S. O. Co. of N. J. in 1901.	No.	S. O. Co. of N. J. took, paid for and has always held entire capital stock. (19 : 642).
	Standard Oil Co. of Nebraska. Marketing only.	Orgd. by S. O. Co. of N. J. in 1906.	No.	S. O. Co. of N. J. took, paid for and has always held entire capital stock. (19 : 635).
	Borne-Scrymser Co. Marketing only.	Orgd. by S. O. Co. of N. J. in 1893.	Yes.	S. O. Co. of N. J. took, and has always held entire capital stock. Company took over business of the firm of B., S. & Co., previously purchased for cash. (19 : 633).
	Washington Oil Co. Producing.	Acqd. in 1890.	Yes.	About 71 per cent. of stock purchased by Trustees for cash. Later held by Nat. Trans. Co. Transferred to S. O. Co., of N. J., Dec. 31, 1905. (19 : 639 ; 7 : 5).

LIST OF APPELLANTS ANALYZED--*(Continued)*:

Included among 20 principal companies in 1899.	Included among subsidiary companies in 1899 or thereafter acquired and now held directly by S. O. Co. of N. J.	Organized by Standard interests? Or acquired and when?	Holds property derived from independent sources.	Remarks.
	Crescent Pipe Line Co.	Acqd. in 1895.	Yes.	Purchased for cash by Nat. Trans. Co. and trnsfd. to S. O. Co. of N. J. Dec. 31, 1905. Entirely within State of Pa. (19 : 640 ; 7 : 3).
	Standard Oil Co. of California. Refining company.	Acqd. by S. O. Co. of N. J. in 1900.	Yes.	Formerly named Pacific Coast Oil Co. Entire stock bought in 1900 for $761,000. cash by S. O. Co. of N. J. All increases stock taken by same company. (17:3490–1, 4). Value of assets in 1906 over $17,000,000. (17:3405).
	Chesebrough Mfg. Co. Makes and sells vaseline.	Acqd. in 1881.		
	Continental Oil Co. Marketing only.	Orgd. by trustees in 1886	Small amt.	
	Galena Signal Oil Co. Manufactures railroad lubricants.	Successor to companies acqd. in 1879		All acquired or organized by Trustees, before July 2, 1890 ; transferred to S. O. Co. of N. J. in 1892 and held by it ever since. (19 : 633–7 ; 7 : 448).
	Swan & Finch Co. Compounds lubricating oil.	Acqd. in 1880.		
	Vacuum Oil Co. Manufactures lubricating specialties.	Acqd. in 1879.		

Standard Oil Co. of N. Y. Refining company.	Orgd. by Trustees in 1882.	Yes.	$7,000,000. of stock issued to Trustees; $8,000,000. of stock taken by S. O. Co. of N. J. in 1903. (19 : 636).
Standard Oil Co. of Kentucky. Marketing only.	Orgd. by Trustees in 1886.	Yes.	Trustees took entire capital stock and increase. (19 : 635).
Standard Oil Co. of Indiana. Refining company.	Orgd. by Trustees in 1889.	Small amount.	Trustees took entire capital stock and increase. (19 : 635).
Standard Oil Co. of Ohio. Refining company.	Orgd. in 1870.		Original company.
Anglo-American Oil Co. (Ltd). Markets in United Kingdom. No other business.	Orgd. by Trustees in 1888.	No.	Trustees subscribed and paid for entire original issue of stock. (19 : 642).
Solar Refining Co. Refining company.	Orgd. by Trustees in 1885.	Small amount.	Trustees took entire stock. (19 : 635).
Buckeye Pipe Line Co.	Orgd. by Nat. Trans. Co. in 1886.	No.	Took over pipe lines in Ohio previously built by S. O. interests. Stock transferred to Trustees in or before 1892. (19 : 640).
Northern Pipe Line Co.	Orgd. by Nat. Trans. Co. in 1889.	No.	Nat. Trans. Co. took all stock and transfd. same to Trustees prior to or in 1892. Company took over pipe lines in Northwestern Pa. constructed by Nat. Trans. Co. (19 : 641).
Southern Pipe Line Co.	Orgd. by Nat. Trans. Co. in 1890.	No.	Nat. Trans. Co. took all stock and trnsfd. same to Trustees prior to or in 1892. Company constructed pipe lines in Southern Penna. (19 : 641).

LIST OF APPELLANTS ANALYZED—*(Continued)*:

Included among 20 principal companies in 1899.	Organized after 1899 and now held by National Transit Co.	Organized by Standard interests? Or acquired and when?	Holds property derived from independent sources.	Remarks.
Eureka Pipe Line Co.		Orgd. by Trustees in 1890.	No.	Trustees took all stock for cash. Company constructed pipe lines in W. Va. (19 : 640).
Indiana Pipe Line Co.		Orgd. by Nat. Trans. Co. in 1891.	No.	Nat. Trans. Co. took entire stock and transferred same to Trustees prior to or in 1892. Company took over pipe lines in Indiana previously constructed by Nat. Trans. Co. (19 : 640).
New York Transit Co. Pipe lines.		Orgd. by Nat. Trans. Co. in 1892.	No.	Nat. Trans. Co. took all stock and transferred same to Trustees in 1892. Company took over pipe lines in N. Y. State previously constructed by Nat. Trans. Co. (19 : 641).
National Transit Co. Principal pipe line company.		Orgd. by Standard interests in 1881.	Small amt.	Took over all pipe line properties owned by Standard interests in 1881. More than ⅔ of shares vested in Trustees in 1882; minority shares acquired prior to July 2, 1890, except small block bought in 1891 (19 : 678).
	Cumberland Pipe Line Co.	Orgd. by Nat. Trans. Co. in 1901.	No.	Nat. Trans. Co. took and still holds entire stock (19 : 640).
	Prairie Oil and Gas Co. Produces and purchases crude oil. Private pipe line.	Orgd. by Nat. Trans. Co. in 1900.	No.	Nat. Trans. Co. took, paid for and still holds entire stock (19 : 639).

Ohio Oil Co. Produces and purchases crude oil and transports same through private pipe line.		Acqd. in 1889.		Original stock bought by Nat. Trans. Co. in 1889, which probably acquired increase of stock up to 80,000. S. O. of N. J. subscribed and paid for 320,000 shares in 1907 (19 : 638 ; 7 : 4).
South Penn Oil Co. Producing company.		Orgd. by Nat. Trans. Co. in 1889.	Yes.	Nat. Trans. Co. took entire stock and transferred same to Trustees before 1892 (19 : 638).
Union Tank Line Co. Owns and operates tank cars.		Orgd. by Trustees in 1891.	Some tank cars.	Trustees took entire stock on organization (19 : 637).
Atlantic Refining Co. Refining company.		Acqd. in 1874.	Yes.	Entire original stock acquired in 1874 and thereafter held by various trustees down to 1892 (19 : 673).

SECOND: Brief statement as to origin of Standard Oil properties.

I. *Refineries.* The money value of all the Standard's refineries in 1882 was about $17,000,000, which up to 1906 had by new construction increased to $57,689,560; of this increase, over $38,000,000 was spent by Standard companies out of their own means, not only in greatly enlarging existing refineries but in building a number of entirely new refineries.

II. *Pipe Lines.* Of 9,388 miles of trunk pipe lines owned by Standard companies in 1908, all but about 320 miles, and (omitting the Crescent Pipe Line acquired in 1895,) all but about 48 miles, had been constructed at various times since 1877 by different Standard companies with their own means; of 45,227 miles of gathering pipe lines so owned in 1908, all but about 1050 miles, and (excluding the Mellen Lines purchased in 1895,) all but about 750 miles, had been built by Standard Oil companies with their own means at various times since 1877.

III. *Marketing Stations.* In 1906, 3,573 marketing stations distributed throughout the United States were operated by Standard companies, of which number at least 3,400 stations, costing from $1,000 up to $200,000 each, had been built entirely by different Standard companies with their own means.

IV. *Crude Oil Production.* The Standard's production of crude oil in 1906 was only 14,052,113 barrels or about eleven per cent. of the total production of the United States.

V. All the stocks and properties of the appellant companies, with negligible exceptions, have been held in undivided common ownership since 1879, or since the respective later dates when the companies were organized or the properties constructed.

VI. The principal sources of crude oil in the United States, and approximate dates of their development are: *Pennsylvania or Appalachian* Field, (1860–1870) in Pennsylvania, New York, Eastern Ohio, Kentucky and West Virginia; *Lima-Indiana* Field, (1886–1888) in Western Ohio and Eastern Indiana; *California* Fields, (1895–1900) in that State; *Texas* Field, (1898–1900) in that State; *Mid-Continent* Field, (1903–1905) in Oklahoma and Kansas; and *Illinois* Field, (1906) in Southern Illinois.

CHAPTER II.

Outline of the Standard Oil Organization.

I. The Standard Oil Co. of New Jersey is, as its name indicates, a New Jersey corporation organized in 1882. Its authorized capital stock is $110,000,000. divided into 1,100,000 shares; the amount of its stock actually issued and outstanding is $98,338,300, or 983,383 shares (*a*), held by nearly 5,000 stockholders (*b*). Apart from its ownership of other companies, it does and has always done an extensive business solely its own, having great refineries, private pipe lines in New Jersey and Maryland, hundreds of marketing stations and a large sales business in those and several other states, and an immense export trade. Its refineries, including the great Bayonne Works, had in 1906 an annual capacity of nearly 20,000,000 barrels of crude oil or nearly one-third of the total aggregate refining capacity of all the then existing Standard refineries (*c*). On December 31st, 1906, the total net assets of the Standard Oil Co. of New Jersey, irrespective of the stocks or bonds of or other interest in any other companies, amounted to $77,890,834.28 (*d*). This amount represented about 21.7% of the entire assets of the whole Standard Oil organization. Apart from qualifying shares for directors, the Standard Oil Co. of New Jersey also owns all the stock of the thirty-three existing appellant companies, with the exception of the following, in each of which it holds only a majority of the stock, to wit: Chesebrough Manufacturing Co., Galena-Signal Oil Co. and Washington Oil Co.

II. Broadly speaking the business of the Standard organization consists in transporting crude oil from the wells to the refineries, there refining it into illuminating oil and numerous incidental by-products, and then selling the products in the domestic and foreign markets. Oil is transported

---

(*a*) Pet. Ex. 9, Vol. 7, p. 30.
(*b*) Def. Ex. 1, Vol. 18, p. 1-92.
(*c*) Def. Ex. 269, Vol. 19, p. 627.
(*d*) Pet. Ex. 9, Vol. 7, p. 28.

through pipe lines which are owned by companies separately organized in different states. In some instances such companies were so organized under laws making the pipe line companies common carriers within the states of their organization. Except, however, the gathering lines, as the feeders from the oil wells are called, none of the pipe line companies have ever been called upon to transport nor have they transported any crude oil for others than Standard Oil companies (*a*). Four of the companies own pipe lines constructed entirely on private rights of way and are in no sense common carriers, to wit: Prairie Oil and Gas Co., Ohio Oil Co., Standard Oil Co. of California and Standard Oil Co. of New Jersey. The testimony is unequivocal that all the Standard pipe lines and substantially all oil pipe lines whatsoever were originally constructed either to take away the owners' oil from their own wells or to carry oil to refineries in which owners of the pipe lines were interested (*b*). In short, pipe lines are adjuncts of refineries and have never been operated to any appreciable extent, either by Standard interests or others, as independent business enterprises (*c*).

Eight of the Standard companies, in addition to the New Jersey company, own refineries situated at various advantageous points on the seaboard or in the interior. All these refining companies but one market their products to the domestic trade in whole or in part. Four of the companies are solely marketing companies for the domestic trade.

The oil is marketed abroad through companies organized in the various foreign countries; and in the Orient, by Standard agencies directly.

(*a*) Payne, Vol. 1, p. 350; Towl, Vol. 17, p. 3612.
(*b*) Payne, Vol. 1, p. 360.
(*c*) Archbold, Vol. 17, p. 3432.

CHAPTER III.

Origin, development and ownership of the Standard Oil business and properties down to 1882.

FIRST: EARLY CONDITIONS IN THE OIL INDUSTRY.

I. *The uncertainty as to the supply of crude oil and the conditions under which the oil business was carried on necessarily rendered the business for many years highly speculative.*

1. In the early days of the oil industry, the supply of crude oil was obtained entirely from the oil region of New York and Pennsylvania. Production in the various local fields within the oil region was invariably characterized by a great output at the start followed by a rapid decline, until in many instances the production became insignificant. In the so-called Bradford Field, in 1882–3, the production reached 81,000 barrels per day (*a*); it has now fallen to 5,000 or 6,000 barrels a day (*b*). The Cherry Grove field, in Warren County, Penn., which was developed about 1882, for a few months produced many thousand barrels a day and then failed entirely (*b*). The production of the wells in the entire Pennsylvania field to-day averages for each well less than one-half barrel of crude oil a day (*c*). While the total production of the New York and Pennsylvania Oil Region increased rapidly and, on the whole, steadily until the year 1882, yet the wide variations in the output of the local fields and the resulting fluctuations in the prices of crude oil made the business both of producers and of refiners most uncertain and speculative (*d*).

2. Throughout the early period of the business, and down even to the early eighties, there was general apprehension that the total available supply of crude oil would be soon exhausted,

---

(*a*) Emery, Vol. 6, p. 2741.
(*b*) Emery, Vol. 6, p. 2742.
(*c*) Emery, Vol. 6, p. 2744.
(*d*) Archbold, Vol. 17, p. 3231.

and that the value of all investments dependent upon such supply would be destroyed.

Mr. Archbold testifies as follows (*a*):

> "I should say that through the earlier years of the business, up to a period in the eighties at any rate, there was constant anxiety as to the exhaustion of the fields; and up to a period I should say in the early eighties at any rate that anxiety was at times apparently well-founded. * * * I know that the anxiety in that respect affected the disposition of investors very markedly indeed with reference to engaging in the business. They said, 'Well, what assurance have we that the supply of this article will continue, and that these investments which you are contemplating in a class of construction that is good for no other purpose will continue in value?' We heard that all through the earlier history of the business."

To the same effect, see Mr. Rockefeller (*b*) and Mr. Archbold again (*c*).

Unwillingness further to encounter the hazards which would ensue from failure of the oil fields, on which the value of their investments was dependent, led many to retire from the oil business.

3. In the earlier days of the oil industry, the prices of crude oil were subject to tremendous fluctuations. The prices of oil in the field prior to 1865 went down as low as ten cents a barrel, and oil from the same well was sold at $16.00 a barrel (*d*). Between 1865 and 1870 oil sold as high as $7.25 per barrel and as low as $1.90 per barrel; the price of the barrels themselves being upwards of $2.50 each (*e*). The first oil exchanges were established in 1870–71. A large amount of speculation in oil took place on these exchanges, where daily prices fluctuated widely. For instance, on February 7, 1874, the price ranged from $1.60 to $2.10 a barrel; in October of the same year, oil sold as low as $.70 a barrel. Many wild-cat com-

---

(*a*) Record, Vol. 17, p. 3250–1.
(*b*) Record, Vol. 16, p. 3072. (*c*) Record, Vol. 17, p. 3470.
(*d*) Emery, Vol. 6, p. 2679–80.
(*e*) Emery, Vol. 6, p. 2683–4; Rockefeller, Vol. 16, p. 3060.

panies were established, ostensibly to engage in the production of oil, and the stocks of these companies were disposed of to the public, with the result of utterly demoralizing the business of production (*a*).

4. At first the crude oil was barrelled at the wells and drawn by wagons to shipping points (*b*). The price of transportation by wagon was very high, varying from $1.50 to $3. or $4. per barrel (*c*). In 1865 wooden tank cars (*d*), and in 1870 iron tank cars (*e*), for crude oil were first used. So also the oil was loaded on barges along Oil Creek and these were floated to the Allegheny River and thence to Pittsburg by artificial floods produced by damming the creek and afterwards releasing the accumulated water (*f*). Branches of the various railroads eventually penetrated into the oil regions, and by 1874, some 30 small gathering pipe lines had been constructed by different persons, connecting oil wells with railroad shipping points (*g*). The first pipe line extending beyond the oil regions and designed to do away with railroad shipments of crude oil was that of the Columbia Conduit Co., organized in 1874, whose line extended down the Allegheny River to Pittsburg, being from 42 to 48 miles long (*h*).

II. *Over-production of refineries, inferior business methods of refiners, and the results.*

1. Prior to 1870, numerous small refineries had been established at many different places (*i*). A great part of these refineries, at least in the oil regions, were very primitive concerns, "often with single little goose-neck stills, hastily constructed and ineligibly located as a rule, put up just in the hurry of the mining excitement of the early days without much knowledge of what the business could or would develop into—mere make-shifts of concerns" (*f*). *The total capacity of the refineries was from 2 to 5 times the amount of the crude oil*

(*a*) Emery, Vol. 6, p. 2734–6; Archbold, Vol. 17, p. 3230.
(*b*) Emery, Vol. 6, p. 2672–3.
(*c*) Emery, Vol. 6, p. 2682.
(*d*) Emery, Vol. 6, p. 2673.
(*e*) Irwin, Vol. 6, p. 3024.
(*f*) Archbold, Vol. 17, p. 3229.
(*g*) Emery, Vol. 6, p. 2724; Archbold, Vol. 17, p. 3231.
(*h*) Emery, Vol. 6, p. 2648; Map, Def. Ex. 259, not printed.
(*i*) Emery, Vol. 6, p. 2611.

to be refined (*a*). Many of those who went into the refining business were without general business experience or special knowledge of the oil business (*b*). *By 1870 or 1871 the profits of refining had become so reduced that it was necessary for any refining concern to increase its volume of business in order to live* (*c*).

2. The business methods of the earlier refiners were as primitive as their equipment. The by-products of petroleum were not utilized. In 1870 benzine derived from the crude petroleum was burned under the stills. The tars produced by the refining processes were run into the river (*d*). The refined oil was disposed of by advertising and often by sending samples to remote points with a view to inducing customers. The product of the refineries was of very uncertain quality as to color, test and burning qualities, and its introduction for domestic use made slow progress (*e*). The refiners as a rule had no warehouses or shipping facilities at sea-board points, so that oil destined for export had to bear warehousing and lighterage charges there (*f*).

3. Before 1870, when the Standard Oil Company of Ohio was organized, many of the weaker refineries had gone out of business. Along Oil Creek there had been many consolidations (*g*). Most of the small refiners in and around New York stopped business when the revenue tax on petroleum was removed, their margin of profit, apparently, having depended upon their ability to evade the tax (*h*). All of the export trade from Pittsburg had come to be handled by three companies—Waring, King & Co., Warden, Frew & Co. and Logan Bros. & Co. (*i*). The principal refineries in the Oil Region had consolidated their business to the extent of having a common sales agent at New York. Consolidation of the business was hastened by the improvidence of the early refiners in putting

---

(*a*) Emery, Vol. 6, p. 2712.
(*b*) Rockefeller, Vol. 16, p. 3057.
(*c*) Rockefeller, Vol. 16, p. 3063.
(*d*) Emery, Vol. 6, p. 2784; Archbold, Vol. 17, p. 3257.
(*e*) Archbold, Vol. 17, p. 3230.
(*f*) Rockefeller, Vol. 16, p. 3063.
(*g*) Emery, Vol. 6, p. 2674.
(*h*) Lombard, Vol. 1, p. 245–6.
(*i*) Irwin, Vol. 6, p. 3010.

too much of their capital into refining plants and by the attitude of capitalists, among whom had grown up a great distrust of the oil business and who were unwilling to risk their money in it because of the wildcat oil schemes which had been so largely exploited (*a*). *All these changes had taken place without the agency of the Standard Oil Company or of its projectors* and they show persuasively how necessary to the continued existence of any concern at that time in the oil business was the policy of strengthening itself and increasing its volume of business which the Standard Oil Company pursued through its earlier years.

SECOND : THE RISE OF THE STANDARD OIL COMPANY AND THE DEVELOPMENT OF ITS BUSINESS DOWN TO THE TRUST AGREEMENT OF 1882.

1. The Standard Oil business from its inception showed the qualities of permanence and stability and had the elements for successful development.

1. John D. Rockefeller started in the oil business in 1862, forty-eight years ago, with a capital of $4000 (*b*). In 1865, he became the owner of a refinery in Cleveland, with which he had been connected for three or four years, and organized the firm of Rockefeller & Andrews to continue its business. Rockefeller & Andrews associated themselves with William Rockefeller in the firm of William Rockefeller & Co., which built another refinery on property adjacent to the refinery of Rockefeller & Andrews. In the same year, the same individuals organized the firm of Rockefeller & Co. with headquarters at New York City, " to develop the sale of oil from that point and to save for our business the expenses of commission men, and by doing our own warehousing business to reduce if possible to a minimum of cost the handling of the oil which we exported " (*c*). The properties of these three firms were in 1867 taken over by the new firm of Rockefeller, Andrews & Flagler—Mr. H. M. Flagler becoming a member of the new firm and a large amount of new capital being put into the business. The new firm had

---

(*a*) Rockefeller, Vol. 16, p. 3067–8.
(*b*) Rockefeller, Vol. 16, p. 3059.
(*c*) Rockefeller, Vol. 16, p. 3053–4.

two refineries at Cleveland, with a growing domestic trade from Cleveland, and an export trade from New York. This firm continued until the organization of the Standard Oil Co. of Ohio on January 2nd, 1870. The business meanwhile had shown a steady increase. Each of the partners gave his entire time to the business and each of them devoted himself to the study of everything that would promote its growth in every department, manufacturing, merchandising and financial (*a*). Their refineries were constructed in the most substantial manner. Samuel Andrews, one of the members of the firm, was a practical refiner of oil, trained in the business, and was one of the few men at that time capable of making good illuminating oil (*b*). The members of the firm were constantly adopting new ideas and putting them into practice. Prior to 1867, they had purchased their barrels, which were often of inferior quality, causing loss by leakage, and the supply of which was insufficient. The cost was as high as $2.50 per barrel. In 1867, the firm established its own plant to make barrels by machinery, with the result that they secured an adequate and regular supply of barrels of good quality, so that the loss by leakage was saved and the cost per barrel was reduced to less than one-half of the former cost. Other innovations in the business of the firm were the establishment of its own warehouses in New York and the purchase there of its own lighters for transporting its own oil from the cars to the warehouses (*c*). In short, the method pursued by the firm from the beginning was to provide its own facilities rather than to hire the facilities of others, and this was done as fast as capital could be obtained (*d*).

2. The firm enjoyed considerable advantages in the location of its refineries at Cleveland, which was the best point for the development of the domestic trade by reason of its ready access, by the Great Lakes and the various railroads, to the North, West and South, and to the Seaboard by several routes: over the Lake Shore & N. Y. Central railroad, over the Atlan-

---

(*a*) Rockefeller, Vol. 16, p. 3055–6.
(*b*) Rockefeller, Vol. 16, p. 3057–8.
(*c*) Rockefeller, Vol. 16, p. 3059–61.
(*d*) Rockefeller, Vol. 16, p. 3063.

tic & Great Western and the Erie; or by water through the Erie Canal (*a*).

3. Perhaps the most important element in the success of the business in its early days and subsequently was the ability of its owners to obtain the necessary capital. From the beginning, they enjoyed high credit and were large borrowers, and the establishment of their branch house in New York enabled them to obtain larger sums of money at lower rates than was possible in the West. This borrowed capital enabled them to avoid tying up all their available resources in the construction of refineries (*b*).

4. In 1870, the Standard Oil Co. of Ohio was organized with a capital of $1,000,000., and took over the business and properties of the firm of Rockefeller, Andrews & Flagler. Various large capitalists, who had watched the progress of the firm and had confidence in its members, subscribed largely to the stock of the new company, and their connection with the concern greatly increased its ability to borrow the capital necessary for the further expansion and development of the business. The refineries of the new company were already not only much the largest in Cleveland but the largest in the entire country (*c*). Their business was probably fully 10 per cent of the entire petroleum business of the country (*d*). By reason of the various innovations they had introduced, the new company was able to save a large part of the expenses which their competitors had to bear (*e*). They had ample capital outside of that invested in their refineries. The ability of the new company to conduct the business economically and its strong financial position gave it the best chance to survive in the impending struggle for existence due to the over-construction of refining plants, with the necessary resulting decline in profits.

II. The purchase by the Standard Oil Company in 1871 and 1872 of various refineries in Cleveland was the natural and inevitable result of conditions then prevailing in the oil industry.

(*a*) Rockefeller, Vol. 16, p. 3056–8.
(*b*) Rockefeller, Vol. 16, p. 3061–6, 3067.
(*c*) Rockefeller, Vol. 16, p. 3062, 3059.
(*d*) Archbold, Vol. 6, p. 3269.
(*e*) Rockefeller, Vol. 16, p, 3063.

The reasons for the purchase of the Cleveland refineries can best be given in Mr. Rockefeller's own words. He says (*a*):

> "We recognized that if we would succeed, we must, if possible, increase the volume of our business with a given expense, and thus reduce the cost of the business in every department of manufacture and merchandising, and the same held true in reference to these warehouses. If we could put through a warehouse two or three thousand barrels instead of one thousand in a day, we reduced our cost. It was along the line of smaller profits and a larger volume."

The desire of the other refiners to sell does not require much explanation. It was a recognized fact at that time, because of the condition of the business, that all concerns were going to require more and more capital (*b*). In respect to the negotiations leading up to these purchases, Mr. Rockefeller says (*c*):

> "Q. Well, to begin with, were you all Cleveland men? A. We were; neighbors, acquaintances, friends, having had our prosperity there together in the business in the good days; and beginning generally to recognize the changes that were coming, and the lessening of the chance of good returns from the refining business on account of the over-production of refined oil, or of the overproduction of the refinery construction."

The first of these purchases was that of the refinery of Clark, Payne & Co. in the latter part of the year 1871. About the same time, the refinery of Alexander Scofield & Co. was purchased. In 1872 and subsequently, a considerable number of other Cleveland refineries, engaged in manufacturing illuminating oil, were purchased (*d*). The refineries were utilized and the best of them continued in operation, being connected with the other Standard refineries in Cleveland by systems of

---

(*a*) Record, Vol. 16, p. 3066–7.
(*b*) Rockefeller, Vol. 16, p. 3065–6.
(*c*) Record, Vol. 16, p. 3065.
(*d*) Rockefeller, Vol. 16, p. 3064–5.

pipes and the entire refining capacity being consolidated, so that it could be operated to the best advantage and most economically (*a*). To obtain the necessary funds to pay for the refineries thus purchased, the capital of the company was increased from $1,000,000 to $2,500,000 early in 1872. The sellers were given the option of taking stock in the Standard Oil Co. or cash in payment for their properties. It is significant of the general want of confidence in the stability of the oil business that the preference was for cash (*b*). Apparently the owners of five of the purchased refineries took stock in payment; the rest took cash (*c*).

It appears that none of the concerns purchased at this time in Cleveland were corporations. Mr. Rockefeller in numerous places refers to them as firms (*d*), and says (*e*): "We bought the properties. We became the owners of the properties." It is also clear that the purchase of each of the separate refineries constituted a distinct transaction, and that there was no understanding or concert of action between their owners respecting the sales (*f*).

It does not appear that restrictive covenants were taken in the case of any of these purchases, whereby the vendors were prevented from re-engaging in business.

III. Expansion and development, on the manufacturing side, of the Standard Oil business subsequent to 1872.

1. The purchase of the various Cleveland Refineries, in 1871 and 1872, added largely to the refining capacity of the Standard Oil Company and to the surplus of its production for which a market must be found. The natural disposition to be made of this surplus was to export it, for which purpose it was necessary to add to the shipping facilities at the seaboard and to acquire new markets abroad. The *Long Island*

(*a*) Rockefeller, Vol 16, p 3161.
(*b*) Rockefeller, Vol. 16, p 3068.
(*c*) Appendix I., p. 248.
(*d*) Record, Vol. 16, p. 3064, 3159, 3160.
(*e*) Record, Vol. 16, p. 3066.
(*f*) Rockefeller, Vol. 16, p. 3064–8.

Oil Co. was a refining company located at Long Island City. It had warehouses and a very extensive dock property located on deep water and accessible to oceangoing ships. In 1872 or 1873 the refinery, warehouses and dock property were acquired to be used in the business of the Standard Oil Co. The warehouse and dock properties were used chiefly in the handling of the Cleveland oils that came on for export. The refinery was of considerable size (*a*). The *Devoe Manufacturing Co.* was also located on Long Island and had shipping facilities on Newtown Creek, which ran into the East River at Long Island City. The business of the Devoe Manufacturing Co. consisted in refining and canning oil and in exporting the same to Europe and to the Orient, in both of which the company had established a high reputation and was obtaining high prices for its distinct brands of oil. It manufactured, at a minimum cost, the cans which it used and which were especially adapted for the Oriental trade. In 1873 the Standard Oil interests purchased a controlling interest in the stock of this company and thereby at once obtained a foreign market for a part of their surplus oil and acquired the means for a further extension of that market with the expansion of the case oil business (*b*). The balance of the stock of the company was purchased from time to time down to 1882 (*c*).

2. By 1874 the demands of the home trade had become such that additional refining capacity was necessary to supply the foreign demands and to use advantageously the facilities for the export trade that had previously been acquired. It was also considered wise that a branch of the Standard Oil Co. should be located in the Oil Regions, where refineries had not only the supply of crude oil at their doors but were considerably nearer to the seaboard than was Cleveland. Near Oil City, Vandergrift & Pitcairn had erected a large modern refinery with good shipping facilities, which was known as the *Imperial Refinery*. This was purchased by the Standard Oil

---

(*a*) Rockefeller, Vol. 16, p. 3075-6.
(*b*) Rockefeller, Vol. 16, p. 3076-7.
(*c*) Record, Vol. 19, p. 679.

interests in 1874 and was utilized to supply additional oil for the export trade. *Charles Pratt & Co.* was a New York corporation, having a refinery in Brooklyn on the East River. They had established a high reputation for special oils, among others Pratt's Astral Oil, which was a very well-known and popular brand of oil for a long time. They had given much attention to cultivating a domestic trade and had also built up an extensive case oil business in the far East. They had dock properties and warehousing facilities and a great deal of cash capital. This company was acquired by Standard Oil interests late in 1874 or early in 1875 (*a*).

3. In order further to extend their refining capacity and at the same time to obtain a foothold in Philadelphia, which was a seaboard refining point of great importance, the Standard Oil interests proceeded to acquire the refineries owned or controlled by William G. Warden, Major Frew and Charles Lockhart, who carried on business under two firm names, viz: as Warden, Frew & Co., in Philadelphia, and as Lockhart, Frew & Co., in Pittsburg. These men were the chief owners of the *Atlantic Refining Co.* of Philadelphia, which had a large refinery and dock facilities and a plant for putting oil in cans. They had also become largely interested in Pittsburg refineries, including those owned by the *Standard Oil Co. of Pittsburg* (not connected with the Standard Oil Co. of Ohio), and the *Model Oil Co.;* also the so-called *Nonpariel* and *Brilliant Refineries.* The Standard Oil interests, late in 1874, in a single transaction purchased all these properties (*b*).

4. From 1875 to 1881, Standard Oil interests from time to time bought a considerable number of refineries engaged in manufacturing illuminating oil,—chiefly very small ones. After 1875, with few exceptions, the purchases were made outright for cash. In some instances, only a majority of the stock of the company owning the refinery or of the new company organized to hold it was bought for cash (*c*).

(*a*) Rockefeller, Vol. 16, p. 3079–80.
(*b*) Irwin, Vol. 6, p. 3023; Rockefeller, Vol. 16, p. 3080–2.
(*c*) Archbold, Vol. 17, p. 3467; Appendix I., p. 248–252.

In the case of all these purchases, what was acquired was substantially a refinery without more. A few purchases of sufficient importance to mention here are given below:

Name.	Place.	Year.	How Held.	Reference.
Bennett, Warner & Co. Porter, Moreland & Co.	Titusville.....	1875	* Acme Oil Co....	16 : 3083
J. N. Camden & Co ..... Poole Refinery.....	Parkersburg, W. Va..... ..	1875	*Camden Consolidated Oil Co ...	16 : 3091-2
Central Refining Co.....	Pittsburgh.....	1876	Majority of stock bought; balance in 1883; all for cash.	17 : 3269 19 : 677
Comfort, Pickering & Chambers.....	Titusville.....	1876	* Keystone Ref. Co.	17 : 3271-2 19 : 678
Bush & Denslow Mfg. Co.	Brooklyn	1880	50 per cent. of stock bought. Balance in 1893	17 : 3358 19 : 676
Empire Refining Co.....	Newtown Creek	1881	80% of stock bought. Balance 1899. All for cash.....	17 : 3275 19 : 680

* NOTE: New corporations organized by Standard Oil interests to hold the refining properties.

5. The *Empire Transportation Company* properties.

The purchase of the refining interests and the pipe lines of the Empire Transportation Co. was necessary to put an end to a ruinous rate war. The Empire Transportation Co. was allied with the Pennsylvania Railroad, and had full control of the oil traffic over that road, owning all the tank cars and fixing the rates charged to shippers. It also owned some small gathering pipe lines. In 1877, this Empire Transportation Co. entered extensively into the refining business. It

acquired control of Sone & Fleming Co., a corporation having a refinery on Newtown Creek in New York, and of the Philadelphia Refining Co. It was proceeding to enlarge the Sone & Fleming Works and to construct a refinery at Philadelphia and apparently was preparing to extend its operations to Pittsburg (*a*).

The other oil carrying roads protested strongly against the Pennsylvania's engaging through the Empire Transportation Co. in the refining business; they asserted that such a course would give the Pennsylvania an advantage in obtaining traffic for its road that they would not submit to. The Standard Oil Co. objected to having as a competitor in the refining business the Company to which it had to look for its allotment of cars and which in many other ways was in a position to discriminate against it (*b*).

The Pennsylvania Railroad disregarded the protests of the other railroads and of the Standard; a demoralizing rate war between the railroads resulted and the Standard interests withdrew their shipments from the Pennsylvania. Negotiations for a settlement of the difficulty ultimately came about; the Pennsylvania was willing to sever its connection with the refining business. To enable it to do so, the Standard interests loaned it sufficient money to buy the cars of the Empire Transportation Co. The Standard acquired the refineries in the year 1877, by purchasing for cash the entire capital stock of the *Sone & Fleming Co.* (*c*) and of the *Philadelphia Refining Co.* (*d*). At the same time, the Standard interests also bought the Empire Transportation Co.'s pipe lines, but very reluctantly and only upon the insistence of the Pennsylvania Railroad (*e*). The charge made by the Government that the struggle over the Empire Transportation Co, was brought about by the Standard to enable it to crush out the competition of a legitimate rival is obviously without foundation (*f*).

(*a*) Rockefeller, Vol. 16, p. 3085–8; Cassatt, Vol. 20, p. 35.

(*b*) Cassatt, Vol. 20, p. 23–4; Rockefeller, Vol. 16, p. 3087–8; Archbold, Vol. 6, p. 3252.

(*c*) Record, Vol. 19, p. 675. (*d*) Record, Vol. 19, p. 618.

(*e*) Cassatt, Vol. 20, p. 35–6; Rockefeller, Vol. 16, p. 3085–9.

(*f*) Rockefeller, Vol. 16, p. 3089.

IV. Extension of the Standard's domestic marketing business necessarily attended its increase of refining capacity.

1. From the beginning the Standard Oil interests had not been idle in seeking to extend their domestic markets. *Chess, Carley & Co.* was a co-partnership having a refinery at Louisville and a domestic trade in refined oil, chiefly in the Southern and Southwestern States. In 1873 the Standard Oil interests acquired a half interest in this firm. *There is no evidence that, prior to this date, the Standard Oil interests had sold in the territory reached by Chess, Carley & Co.* On the contrary, Mr. Rockefeller testifies that the object of the purchase was to extend the Standard's domestic market to the territory in which Chess, Carley & Co. were doing business, thereby securing an additional outlet for the product of the Standard refineries (*a*). This, therefore, cannot be said in any substantial sense to have been the purchase of a competing business.

2. *Alexander McDonald & Co.* was a firm doing a marketing business, with headquarters in Cincinnati. *They bought their supplies largely from Standard Oil companies* (*b*). This firm had a marketing business in several Western states. In 1878, the Consolidated Tank Line Company was incorporated with a capital of $125,000 to take over the business of Alexander McDonald & Co.; one-half of the stock being taken by Standard Oil interests. This corporation extended its marketing business until its stations covered the Southern parts of Ohio, Illinois, Indiana and various states west of the Mississippi (*c*). The Standard Oil Company of Ohio also established its own marketing stations in the Northern part of the same states and in other Western and Northwestern States (*d*).

3. In the New England States, the Standard Oil interests acquired certain properties for the purpose of extending to those states an effective marketing system. *Carter, Windsor & Co.* did business in New England under the name of Maverick Oil Co., marketing oils in Boston and to some extent through New England. A corporation entitled Maverick Oil Co. was organized in 1877 by Standard Oil

---

(*a*) Rockefeller, Vol. 16, p. 3077-8; Archbold, Vol. 17, p. 3360.
(*b*) Archbold, Vol. 17, p. 3360.
(*c*) Record, Vol. 19, p. 677; Archbold, Vol. 17, p. 3271.
(*d*) Record, Vol. 19, p. 677.

interests to take over the business of Carter, Windsor & Co.,—the Standard Oil interests taking seven-tenths of the stock (*a*). The Maverick Oil Co. apparently owned a separate small business under the name of *Kidder, Vaughn & Co.*, oil jobbers doing business in New England. In 1879 the Beacon Oil Co. was organized to take over the separate properties and business of *Kidder, Vaughn & Co.*, seven-tenths of the stock of the new company being subscribed for by Standard Oil interests (*b*). The *Portland Kerosene Oil Co.* was a company doing business in New England, with headquarters at Portland, Me. It had had a small refinery, but its chief business was that of marketing oil. *Its chief supplies were bought from Standard Oil interests.* In 1878, the Standard Oil interests purchased a large part of the stock of this company (*c*). These three companies—Maverick Oil Co., Beacon Oil Co. and Portland Kerosene Oil Co., for some time thereafter acted as marketing agents of the Standard Oil interests in the New England States.

V. Lubricating Oils.

1. Lubricating oils are made to a large extent from the crude residuum remaining after the distillation of illuminating oil. *The American Lubricating Oil Co.* and the *Mica Axle Grease Co.* located at Cleveland, had plants specially adapted to the manufacture of lubricating oils. The properties of these two companies were purchased by Standard Oil interests in 1877 or 1878 and vested in a new company named the American Lubricating Oil Co. *Prior to that time, it would seem that lubricating oil had not been made by the Standard Oil interests, nor had they plants adapted to that purpose.* These two concerns so purchased, therefore were not competitors of the Standard. They occupied a commercial field as distinct from the business of illuminating oil as is now the business of making and selling gas (*d*).

The making of lubricating oils thus entered upon was a further diversification of the Standard Oil business and was

---

(*a*) Record, Vol. 19, p. 678.
(*b*) Record, Vol. 19, p. 678; Archbold, Vol. 17, p. 3363, 3272, 3357, 3268.
(*c*) Archbold, Vol. 17, p. 3364.
(*d*) Rockefeller, Vol. 16, p. 3083–4; Archbold, Vol. 17, p. 3466.

one of the first important steps towards the utilization of the crude residuum for the making of by-products (*a*). Later, in order to have lubricating oil facilities commensurate with the amount of the residuum to be utilized, the Standard interests acquired the lubricating plants, or a large interest in the same, of the following concerns, all for cash: In 1878, the *Eclipse Works*, at Franklin, Pa., an extensive but unsuccessful refinery, which had ceased operations prior to 1878 (*b*), and *Paine, Ablett & Co.*, Smith's Ferry, Pa.; in 1879 the *Galena Oil Works* and the *Signal Oil Works*, at Franklin, later consolidated into the Galena Signal Oil Co., which were associated and non-competing enterprises making only special lubricating and signal oils of peculiar excellence for railroad use. *At that time and for many years after, these railroad oils were protected by Letters Patent and in recent years they have been manufactured by secret processes* (*c*). Hence these Galena concerns did not compete with the Standard's business in any real sense, since no one else could make the same oils (*d*). The *Vacuum Oil Co.*, having works at Rochester, N. Y., likewise made special brands of lubricating oils adapted to special purposes. These oils were entirely different from the Galena oils, with which they did not seriously compete, and were for the most part suited to the needs of a special trade (*e*). In 1879, the Standard Oil interests purchased three-fourths of the stock of the Vacuum Oil Co. for cash. The balance of the stock was bought for cash at various dates down to 1900 (*f*.)

2. Development of marketing facilities for lubricating oil naturally followed. Standard Oil interests bought into several concerns doing only a marketing business in lubricating oils, chief of which were *Thompson, Bedford & Co.*, New York (1878); *Swan & Finch*, New York (1880); *Hamilton & Miller*, Cincinnati, (1880); in each of which a half interest was acquired (*g*), the Inland Oil Co. being organized to take over the

---

(*a*) Rockefeller, Vol. 16, p. 3084–5.
(*b*) Archbold, Vol. 17, p. 3368–9.
(*c*) Steinbrenner, Vol. 11, p. 447, 523, 532.
(*d*) Archbold, Vol. 17, p. 3366–7.
(*e*) Archbold, Vol. 17. p. 3370–1.
(*f*) Record, Vol. 19, p. 637; Vol. 19, p. 681.
(*g*) Archbold, Vol. 17, p. 3361, 3367–8, 3395.

business of Hamilton & Miller. The acquisition of interests in these concerns was a normal development. Lubricating oil is sold to an entirely different class of customers than is illuminating oil. Moreover, lubricating oil made from petroleum had in the first place to compete with numerous long established lubricants made from other raw materials. It was good business judgment for the Standard interests to follow the line of least resistance and buy into concerns which had already worked up an extensive trade for petroleum lubricants, rather than to undertake the costly and unnecessary task of building up such a trade for themselves. *In no single instance were any of the acquisitions thus far or hereafter referred to accompanied by restrictive agreements preventing the vendors, or any individuals connected with the business of the vendors, from re-engaging in the same busines where and when they would.*

VI. Pipe lines.

1. To insure an adequate and constant supply of crude oil for their refineries, it early became indispensable for the Standard Oil interests to own pipe lines. They proceeded to acquire these, partly by construction and party by purchase, beginning about 1873 (*a*).

Nearly all the early pipe lines were mere gathering lines (*b*), which were poorly constructed, having different owners and under very lax management (*c*). Most of them were very small and many of them insignificant in size,—though they were managed by companies with high-sounding names. The first purchase made by Standard interests was that of the so-called American Transfer Co., in 1874, which at that time owned only a line eight miles long (*d*). Maps showing pipe lines as they existed in the years 1874 and 1877, respectively, are in evidence as Def. Exs. 259 and 260 (not printed). The Government has prepared a list of portentous length purport-

---

(*a*) Lee, Vol. 6, p. 3153; Rockefeller, Vol. 16, p. 3092.
(*b*) Emery, Vol. 6, p. 2649.
(*c*) Archbold, Vol. 17, p. 3230-1.
(*d*) Rockefeller, Vol. 16, p. 3175, 3201; Def. Ex. 259 (not printed).

ing to give the pipe line concerns purchased by Standard Oil interests in 1874–1877. From the maps (*a*) just mentioned it appears that six of these concerns, to wit, Antwerp, Oil City, Karns, Grant and Relief pipe line companies and the Penn. Transit Co. (lower division) had pipe lines, which were respectively only from 7 to 17 miles in length,—their aggregate length not exceeding 78 miles. Five of the concerns mentioned in the Government's list, to wit, the Sandy, Milton, Keystone, Hunter & Cummings and Clarion pipe line companies are so small as not to appear on the maps at all. Only three of the concerns mentioned had lines of really appreciable size, to wit,—The Union, about 60 miles long (*b*), the Columbia Conduit Co., 42 to 48 miles long (*c*), and the United Pipe Co., about 120 miles. The entire mileage of all the concerns named as pipe line acquisitions in the Government's table for the years 1874 and 1877 cannot have exceeded 700 miles. Of this, only the 48 miles bought from the Columbia Conduit Co. was in the nature of a trunk line (*c*). The Union lines were a part of the purchase of Empire Transportation Co. properties, made very unwillingly by Standard interests in 1877 (*d*). With few exceptions, these lines did not compete with each other. They were simply conduits from specific wells to the nearest railroad points or to specific refineries (*e*). Only two of them appear to have competed with the United Pipe Lines owned by Standard interests, namely : the Columbia Conduit Co. and the Union (*f*). If they did not compete with each other, still less did they compete with Standard refineries. *Moreover, every one of these pipe lines was included entirely within the State of Pennsylvania.* There would seem to have been no reason in law or propriety why the Standard interests should not pur-

---

(*a*) NOTE: No scale of miles appears on these maps. They are, in fact, drawn to the scale of two miles to the inch, as will readily appear by measuring, on Def. Ex. 259, the distance covered by the line of the Columbia Conduit Co. stated by Mr. Emery and Mr. Archbold to have been about 42 to 48 miles.

(*b*) Def. Ex. 260, (Map, not printed). (*c*) Archbold, Vol. 17, p. 3630.

(*d*) Cassatt. Vol. 20, p. 35.

(*e*) Emery, Vol. 6, p. 2649; Irwin, Vol. 6, p. 3015.

(*f*) Campbell, Vol. 6, p. 3324.

chase these lines, in order to insure their own supply of crude oil, which was liable to fail at any time on account of the diverse interests involved in such a multifarious ownership or because of incompetent management.

2. Another cause rendered it imperative that these scattered, disjointed, little pipe lines should be united in a single control. Most of their owners lacked capital as the oil fields developed. Oil wells were constantly declining and new ones being opened. New local fields were constantly being discovered. Unless the pipe lines were extended promptly to take care of the production of the newly opened wells and of the new fields, much oil would go to waste, to the great loss of the producers, while the supply of the refineries would be jeopardized (*a*).

3. Commencing, in 1874, with the purchase of the American Transfer Co., having about eight miles of pipe, and of a one-third interest in some of the lines of the United Pipe Co. owned by Vandergrift & Forman, the Standard made these the nucleus for the system afterwards known as the United Pipe Lines. The necessary work of new construction was then carried forward rapidly by the American Transfer Co. and the United Pipe Lines, the other small pipe lines purchased being incorporated into the system (*b*). The most important purchase made was that already mentioned of the Columbia Conduit Co., having a pipe line running from the oil fields to Pittsburg, about 48 miles (*c*). This purchase was made in 1877 to ensure a supply of crude oil for refineries at Pittsburg owned by the Standard interests (*d*). By the end of 1877, an efficient pipe line system had been created. By the year 1882, the 48 miles of trunk line bought from the Columbia Conduit Co. had grown, solely by construction with funds furnished by Standard Oil interests, to some 1062 miles, and the gathering system, also chiefly by like construction, to nearly 2500 miles (*e*).

4. Meanwhile, a new element had been introduced into the pipe line situation by the vast over-production of crude

---

(*a*) Rockefeller, Vol. 16, p. 3094.
(*b*) Rockefeller, Vol. 16, p. 3092–5, 3223.
(*c*) Archbold, Vol. 17, p. 3630.
(*d*) Rockefeller, Vol. 16, p. 3095–6.
(*e*) Archbold, Vol. 17, p. 3630; Def. Ex. 261, Vol. 19, p. 621.

oil and the necessity of caring for it, which are graphically described by Mr. Rockefeller in part as follows (*a*):

> "Great floods of oil came, and with the capital which we introduced we made it our business to see to it that the oil was saved and taken care of. It became a large business of itself, of very great importance to the whole industry. * * * We continued to build tanks year after year. * * * It was a matter * * * of great necessity—that we should thus have taken hold of it and put in the necessary capital * * * to see to it that the oil was not lost; that when it came out of the ground, whether at day or night, our men should be there, should make the connections and save the oil. And then we went on with the necessary larger pipes to get it away to where it would find its market, its shipping point. And then the matter of the building of the tanks. * * * We did not make one decision to construct the tanks which were necessary, but our men coming in from the fields would report from time to time the pressing necessity for additional 500,000 barrels of tankage. * * * And so, step by step, we continued building until million after million of barrels of tankage were constructed. It was an immense outlay of money * * * otherwise the oil (much of it) would from time to time have wasted and run into Oil Creek and the Allegheny River. We saved it. It could not have been done under the system that was previously in vogue. There was not the capital there; there was not the organization there. It was a Godsend to the region that we moved, and moved as they needed it, and moved boldly, and continued so long as the necessity existed."

The capacity of all the storage tanks in the Oil Regions in 1875 did not exceed at the outside three or four million barrels (*b*). In 1886 the stocks of crude oils for which storage had been provided by the Standard Oil lines were nearly 32,000,000 barrels (*c*), which, with the cost of tankage, represented a long term investment of quite $32,000,000. Mr. Emery, a hostile witness, called by the Government, testified to the admirable and extraordinary efficiency and fidelity shown by the Standard interests, at the time in question, in taking care of crude oil as produced (*d*).

(*a*) Record, Vol. 16, p. 3095.
(*b*) Emery, Vol. 6, p. 2740.
(*c*) Pet. Ex. 958, Vol. 21, p. 12[illegible]
(*d*) Emery, Vol. 6, p. 2745.

5. *Obviously a large and assured volume of business in refined oil and other products of petroleum was not only necessary to justify the Standard Oil interests in making these enormous investments in pipe lines and in stored oil, but was indispensable to enable them to stand the absorption of so much capital and its withdrawal from active business channels.* Hence, as has already been shown, they were compelled to reach out in every direction and by the acquisition and construction of refineries, both for illuminating and lubricating oil, to enlarge their output, and by extending their marketing and export facilities to carry their products into all markets domestic and foreign.

VII. Miscellaneous Acquisitions Made Prior to 1882, to Utilize Waste Products or Effect Economies.

1. The *Chesebrough Manufacturing Co.* was an extensive manufacturer and maker of vaseline, which was coming to be one of the most widely used by-products of petroleum. In 1881 the Standard Oil interests purchased a majority of the stock of that Company. At the time of this purchase the Standard Oil companies, while they had an unlimited supply of the crude residuum, which was the raw material for vaseline manufacture, *were none of them making vaseline nor have they ever made it.* Hence it cannot be maintained that this was a purchase of a competing business (*a*). The *Elizabethport Acid Works* were organized in 1879 to build works at Elizabeth, N. J., for restoring spent acid so that it might again be used in the refining processes.

2. Several small producing properties were acquired at this period, which need not be enumerated, since no specific charges are made against the Defendants based upon the ownership or management of producing properties.

VIII. Acquisitions only incidental to expansion of the business as a whole.

1. While the properties acquired by Standard Oil interests prior to 1882 were of considerable extent and importance, yet their acquisition was merely incidental to the development of the business as a whole and they were in the aggregate a relatively small part of the total value of the various Standard

---

(*a*) Archbold, Vol. 17, p. 3359.

investments. Many of the properties acquired were so added to and enlarged that to all intents and purposes they became creations of the Standard Oil interests. The capacity and actual consumption of the Standard refineries by 1882 had reached some 16,500,000 barrels of crude oil per year (*a*). *The total production of crude oil in 1870 was only about 5,000,000 barrels and in 1876 was only about 9,000.000 barrels* (*b*). The appraised valuation of the various manufacturing and refining plants of the Standard interests in 1882 was about $17,000,000. Great plants had been or were being constructed at Olean, N. Y., at Communipaw and at Bayonne (*c*). Works at different refining points had been consolidated, modernized and largely improved, and the refining business of the Standard Oil interests, as a whole, had been unified, and each plant developed with a view to supplying such part of the trade as from its location or for other reasons it was best adapted to supply (*d*).

THIRD: THE OWNERSHIP OF THE STANDARD OIL PROPERTIES DOWN TO 1882.

I. The stock of the Standard Oil Co. of Ohio was increased from $1,000,000 to $2,500,000, in 1872, in order to provide funds with which to buy the various Cleveland refineries acquired in 1871 and 1872 (*e*). In 1875 the stock was further increased to $3,500,000, *at which figure it has ever since stayed* (*f*). Prior to the increase in 1872, the stock was all owned by John D. Rockefeller and nine associates. In March, 1875, there were thirty stockholders (*g*). On April 8th, 1879, there were thirty-seven and on January 1st, 1882, there were forty-one stockholders, individuals and partnerships, by whom the entire capital stock of $3,500,000. was on these respective dates owned and held (*h*).

1. The refineries purchased in Cleveland in 1871 and 1872 were conveyed directly to the Standard Oil Company of Ohio, a few of them being paid for with stock of that company and the balance apparently with money obtained by the sale of new stock to others (*i*).

(*a*) Def. Ex. 268, Vol. 19, p. 626.
(*b*) Def. Ex. 265, Vol. 19, p. 624.
(*c*) Archbold, Vol. 17, p. 3251-2.
(*d*) Rockefeller, Vol. 16, p. 3139, 3161; Archbold, Vol. 17, p. 3467.
(*e*) Rockefeller, Vol. 16, p. 3066, Def. Ex. 387, Vol. 19, p. 891.
(*f*) Def. Ex. 387, Vol. 19, p. 892.
(*g*) Def. Ex. 387, Vol. 19, p. 893. (*h*) Def. Ex. 386, Vol. 19, p. 889.
(*i*) Rockefeller, Vol. 16, p. 3066; Appendix I., p. 247.

2. The properties of the Long Island Oil Co., Charles Pratt & Co., Devoe Manufacturing Co., in part, Imperial Refinery at Oil City, the Warden, Frew & Lockhart properties, the Camden properties at Parkersburg, West Va. and perhaps one or two others were paid for by issuing therefor stock of the Standard Oil Co. of Ohio, but *the stocks representing these various properties were taken over by and vested in individuals as trustees for the benefit of the stockholders of the Standard Oil Company of Ohio, according to the proportionate interests of such stockholders in that Company*, such stocks never having been vested in the Standard Oil Company itself as a corporation. The remaining purchases, down to 1882, whether of properties or of the entire stock of purchased companies, or of a majority of such stock, or of the stock of new companies organized to take over purchased properties, *were paid for with the common moneys of the Standard Oil Co. of Ohio taken out of the treasury of that Company, and these stocks likewise were held for said stockholders' benefit by various individuals as trustees* (*a*). These facts are found by the Court below, and it is unnecessary to set forth the details as to each Company. A few examples will suffice.

3. In the latter part of 1874, the theretofore existing corporation of *Charles Pratt & Co.* was acquired with the stock of the Standard Oil Co. of Ohio. Thereafter and on March 31st, 1875, the entire capital stock of Charles Pratt & Co. was duly transferred on the books of that Company to, and reissued directly to, H. M. Flagler, Secretary, Trustee, with the exception of qualifying shares, which were issued, also in trust, to other individuals, by whom and by Mr. Flagler the entire capital stock continued to be held in trust for the stockholders of the Standard Oil Co. of Ohio down to April, 1879 (*b*).

In 1877, the entire capital stock of the theretofore existing corporation named *Sone & Fleming Mfg. Co.* was bought with cash taken from the treasury of the Standard Oil Company of Ohio and belonging therefore in equity to the stockholders of

---

(*a*) Archbold, Vol. 17, p. 3259; Rockefeller, Vol. 16, p. 3096-7; Appendix I, p. 247-252.

(*b*) Def. Ex. 813, Vol. 19, p. 742; Rockefeller, Vol. 16, p. 3081, 3097, 3153.

that Company (*a*). The entire stock so bought was immediately transferred on the Company's books, and reissued directly to H. M. Flagler, Trustee, except qualifying shares issued to other individuals in trust, all the stock being thereafter thus held in trust for the stockholders of the Standard Oil Company of Ohio down to April, 1879 (*b*).

The *Camden Consolidated Oil Co.* was organized by Standard Oil interests May 21st, 1875, with a capital stock of 4,000 shares, to which Company were immediately transferred the two refineries just purchased from J. M. Camden & Co. at Parkersburg, West Virginia. The entire capital stock of the new Company was all subscribed for by and was issued to J. N. Camden and others for account of the stockholders of the Standard Oil Company of Ohio, and they continued to hold the same in trust for such stockholders down to 1879 (*c*).

These examples fairly represent what was done in all instances prior to April 8th, 1879, except as to the Cleveland refineries. Whether the purchase was of the stock of an existing company or of stock of a newly organized company formed to take over a purchased property, the stocks so acquired were issued immediately, as in the examples given, to individuals in trust to hold the same for the common benefit of the stockholders of the Standard Oil Company of Ohio and none of such stocks were ever vested in the last named company as a corporation (*d*). It thus appears that the individuals who were the stockholders of the Standard Oil Co. of Ohio were the beneficial owners of these properties and stocks from the times of the several acquisitions, in an undivided common ownership. Obviously the concerns and businesses acquired were not and could not be, after their acquisition, independent or competitive concerns in the sense of being competitive concerns separately owned.

II. The Vilas, Keith & Chester agreement.

1. On April 8th, 1879, the Standard Oil Company of Ohio, which seems to have had the physical possession of the certificates of stock held in trust for its stockholders by indi-

---

(*a*) Rockefeller, Vol. 16, p. 3088-9; Def. Ex. 212, Vol. 19, p. 675.
(*b*) Def. Ex. 317, Vol. 19, p. 747.
(*c*) Rockefeller, Vol. 16, p. 3092, 3096-7; Archbold, Vol. 17, p. 3634; Def. Ex. 309, Vol. 19, p. 727.
(*d*) Rockefeller, Vol. 16, p. 3096-7.

viduals, as already stated, together with each of its stockholders and with each of the individual trustees in whose names the said stocks stood, joined in the execution of an instrument of trust, the original of which, with all the original signatures thereto, was duly proved and offered in evidence on behalf of the defendants (*a*). This instrument, printed in full in the Record as Defendant's Exhibit 257 (*b*), recites the various stocks and other interests theretofore standing in the name of various individuals as trustees for the said stockholders, and transfers all right, title and interest in said stocks and interests to Myron R. Keith, George F. Chester and George H. Vilas, as Trustees, " to hold, control and manage the said stocks and interests for the exclusive use and benefit of the following named persons and in the folllowing proportions named, (giving a list), and to divide and distribute the same as soon as they can conveniently do so between the said persons for whose benefit they hold the same as aforesaid, and in the respective proportions aforesaid * * *."

The persons named in the said list as those among whom the various stocks and interests described were to be distributed were stockholders and were all the stockholders of the Standard Oil Co. of Ohio and the proportions named in the list were the proportions in which such persons respectively held the stock of that Company (*c*).

2. The purpose of executing this instrument was undoubtedly to gather into the same hands the various stocks and other interests which, while they belonged in equity to a definite group of persons, to wit, the stockholders of the Standard Oil Co. of Ohio, were standing in the names of various different individuals and were subject to the embarrassments that such an arrangement might at any time create.

Mr. Archbold says (*d*):

> " It seemed it was a simple method of holding the interests that had been acquired for this common ownership."

(*a*) Rockefeller, Vol. 16, p. 3096–8.
(*b*) Record, Vol. 19, p. 618.
(*c*) Rockefeller, Vol. 16. p. 3097–8; Def. Ex. 386, Vol. 19, p. 889.
(*d*) Record, Vol. 17, p. 3258.

Mr. Rockfeller says (*a*) :

> " It was made for the purpose of holding for the benefit of these individuals for whom these interests had been acquired the properties in the form that seemed the most feasible."

The stocks described in the Vilas Keith & Chester agreement were upon the execution of that agreement transferred on the books of the several companies to Vilas, Keith & Chester, Trustees, to whom new certificates of stock were issued. (See transcripts from stock books of the various companies printed as Defendant's Exhibits in volume 19 and indexed under names of the separate companies.)

The stocks transferred to Vilas, Keith & Chester, Trustees, were not divided but were held by them, subject to the terms of the instrument just described, until the execution of the trust agreement of 1882 (*b*). *At all times, each stockholder of the Standard Oil Co. of Ohio had the same proportionate interest in each of these stocks so held that he had in the stock of the Standard Oil Co. of Ohio itself* (*c*).

III. The period of the Vilas, Keith & Chester agreement.

1. A few of the acquisitions made by Standard Oil interests prior to 1882 were made subsequent to the execution of the Vilas, Keith & Chester agreement. In all such instances, the purchase was made for cash, the money coming either from the treasury of the Standard Oil Co. of Ohio or from the treasury of one of the companies whose stock was held by Vilas, Keith & Chester (*d*). Where corporate stocks were acquired, either of existing corporations or of new corporations organized to take over purchased properties, such stocks were transferred and issued either to Vilas, Keith & Chester directly or in some instances to other individuals acting as trustees for the stockholders of the Standard Oil Co. of Ohio. Where the latter course was adopted, it would seem that the stock certificates were endorsed in blank by such individuals and delivered to Vilas,

---

(*a*) Record, Vol. 16, p. 3175.
(*b*) Rockefeller, Vol. 16, p. 3178.
(*c*) Rockefeller, Vol. 16, p. 3180.
(*d*) Archbold, Vol. 17, p. 3467; Appendix I., p. 252.

Keith & Chester, who had the custody of the certificates of all the stocks held for common account at the time of the trust agreement of 1882, when they delivered all the said stock certificates to the trustees named in that trust agreement (*a*).

2. Some important changes in the methods of holding properties already owned took place during the same period. The National Transit Co. was organized in 1881 to take over the pipe lines belonging to Standard Oil interests into one organization (*b*). At the time of such organization, the physical properties of the American Transfer Co. were conveyed to the National Transit Co. and 94 per cent. of the stock of the United Pipe Lines was transferred to it by Vilas, Keith & Chester (*c*). The *Chess-Carley Co.* and *Thompson & Bedford Co. Ltd.*, were organized to take over the business of the firms of the same names, in which large interests were already held for the Standard Oil stockholders. The stocks of these new companies, as far as they represented Standard holdings, were issued directly or indirectly to Vilas, Keith & Chester, Trustees (*d*). Certain of the smaller companies owning refineries were liquidated and their properties conveyed to other companies and various other minor changes took place with a view to the unification and systematization of the business. With the exception, however, of the few new acquisitions, the properties transferred to Vilas, Keith & Chester on April 8th, 1879, were substantially the same as those delivered by them to the Trustees under the later trust agreement of January 1, 1882.

3. During this period, though each company was separately managed by its own officers and directors yet there was co-operation between all the companies in the economical and efficient conduct of the business as a whole for the common benefit of its common owners, who were, as aforesaid, the stockholders of the said Standard Oil Co. of Ohio.

FOURTH : TRUST AGREEMENT OF 1882.

I. On January 2nd, 1882, there was executed a more formal Trust Agreement, which, together with a supplemental agreement of January 4th, 1882, are printed in the Petition (*e*).

(*a*) Def. Ex. 270, Vol. 19, p. 628. (*e*) Record, Vol. A, p. 21–31.
(*b*) Archbold, Vol. 17, p. 3232.
(*c*) Archbold, Vol. 17, p. 3466; Def. Exs. 341–*a*, 282, Vol. 19, p. 820, 678.
(*d*) Def. Exs. 324, 331, Vol. 19, p. 759, 782; Archbold, Vol. 17, p. 3641-2.

This Agreement created what was thereafter known as the Standard Oil Trust. In the body of the instrument, the parties are described as consisting (1) " of the stockholders and members " of certain corporations and limited partnerships ; (2) of certain individuals named and (3) " of a portion of the stockholders and members " of certain other corparations and limited partnerships (*a*). The corporations and limited partnerships mentioned in the first and third groups of parties, excepting the Standard Oil Co. of Ohio, were in fact those and only those whose capital stock was at the time held by Vilas, Keith & Chester as trustees and of whose shares (wholly as to the corporations in the first group and partly as to those in the third group) the stockholders of the Standard Oil Co. of Ohio were then the equitable owners. Many of these concerns had never competed with each other nor with any Standard Oil interest and none of them had so competed subsequent to their acquisition. The individuals named in the second group of parties, (*a*) are the same as those who executed the principal and supplemental agreements (*b*), and both are identical with the then stockholders of the Standard Oil Co. of Ohio, together with the three former trustees, Vilas, Keith & Chester. The real parties to this Agreement, therefore, and all of them, however variously described in the body of the instrument, were merely the entire body of stockholders of the Standard Oil Co. of Ohio, together with the three former trustees (*c*). Following the execution of this agreement, the stockholders of the Standard Oil Co. of Ohio each transferred the stock in that Company held by him to the trustees named in the new trust agreement (*d*) ; and Vilas, Keith & Chester turned over to the new trustees all the stocks that had been held by them for the common account, that is to say,—the stocks of all the companies named in the Trust Agreement other than the Standard Oil Co. of Ohio (*e*). To each former stockholder of the Standard Oil Co. of Ohio, the new trustees then issued 20 shares of trust certificates for each one share of stock of that company previously held by such stockholder, which

---

(*a*) Petition, Vol. A, p. 21–2. (*b*) Petition, Vol. A, p. 29, 30–1.
(*c*) Rockefeller, Vol. 16, p. 3898, 3181 ; Archbold, Vol. 17, p. 3258 ; Def. Exs. 386 and 270, Vol. 19, p. 887–9, 628.
(*d*) Def. Ex. 386, Vol. 19, p. 889, last column.
(*e*) Def. Ex. 270, Vol. 19, p. 628.

trust certificates represented his interest both in the Standard Oil Co. of Ohio and in the stocks previously held by Vilas, Keith & Chester, so that he retained the same proportionate interest in the entire business as theretofore (*a*). The total capital stock of the Standard Oil Co. of Ohio, all of which was outstanding, was $3,500,000. Therefore, the total amount of trust certificates issued in 1882 by the Trustees was 700,000 shares or $70,000,000 par value (*i. e.* 20 times $3,500,000) (*b*), which was the total appraised value of all the stocks and properties transferred to the trustees, all of which certificates were issued to the former stockholders of the Standard Oil Co. of Ohio in exact proportion to their former holdings in the stock of that Company (*c*).

The new Trust Agreement, therefore, made no change in the situation, except in the personnel of the holders of the legal title to the properties already owned in common. It still continued true that all the common properties were held in trust for the same group of owners in the same proportion as before. No additional companies or properties were brought in by the execution of this Trust Agreement nor was it an agreement bringing together independent competing concerns separately owned. It simply provided for a transfer of non-competing common properties from one set of trustees to another set of trustees with ampler powers, in addition to which the beneficiaries under the trust transferred to the new trustees the stock of the Standard Oil Co. of Ohio itself, to be held in like manner as were the stocks of the other companies owned in common.

II. The Trust Agreement of 1882 was devised as a simple and effective means of holding and administering the common properties and of furnishing the common owners with marketable tokens of their respective interests in such properties. Mr Archbold referring to this Trust Agreement says (*d*):

> " It was made as a simple and effective form of holding the interests which had been theretofore acquired. We were advised by counsel that neither the Standard

---

(*a*) Rockefeller, Vol. 16, p. 3182; Petition, Vol. A. p. 33, 34.
(*b*) Pet. Ex. 250, Vol. 7, p. 423.
(*c*) Archbold, Vol. 17, p. 3259; Def. Ex. 386, Vol. 19, p. 887; Petition, Vol. A. p. 33, 34.
(*d*) Record, Vol. 17, p. 3259-60.

Oil Co. of Ohio nor indeed any other single corporation could successfully or safely, perhaps, hold them. They were varied in nature; the property was widespread, located in many different States, the laws of which were in many cases restrictive as to the rights of corporations, and the trusteeship was suggested as a simple method of bringing together those properties so as to provide for an evidence of ownership, a token of ownership that would be marketable, that would give the interests a market value, a basis for trading, and that would enable an administrative oversight in the simplest possible way. * * *

There was no general token or evidence of ownership prior to 1882, and that was a very controlling feature of the necessity that led to the making of the trust agreement. Individuals in interest, through joint ownership in the Standard Oil Company of Ohio and in the Vilas, Keith & Chester holdings, wanted something, as I say, that would evidence their ownership in the property as a whole, and that could be marketed."

CHAPTER IV.

Early Contracts with Railroads.

I. Printed in the Petition, as Exhibits 2 to 8 inclusive (*a*), are several contracts or arrangements made between 1872 and 1878 with or between various railroad companies, and the Government charges that, through advantages derived from such contracts, the Standard Oil Co. was enabled to coerce many rival refineries into selling out to it and "to crush out" other competitors. Except Mr. Emery, an independent refiner called by the Government, who showed himself intensely biased, not one witness has testified that refineries were acquired through coercion. It is inconceivable that some of the other former owners of refineries should not have so testified, if the charges of coercion were true. On the contrary, Irwin, Reighard, Lombard and others, who at different times sold refining properties to the Standard and who were called by the Government, either were silent on the point or testified favorably to the Standard (*b*). The real reasons for the purchase of the various properties and for the readiness of the former owners of these to sell are sufficiently

(*a*) Record, Vol. A. p. 116–141.
(*b*) Irwin, Vol. 6, p. 3014; Reighard, Vol. 6, p. 3135; Lombard, Vol. 1, p. 250, 267.

shown in the preceding discussion; and the following analysis of these railroad contracts shows that they had nothing to do with the matter.

II. The contracts in question are the following:

Exhibit 2—South Improvement Co. contract (*a*).

Exhibits 3, 4 & 5—Terminal Contracts between the Standard Oil Co. and certain railroads (*b*).

Exhibit 6, Pooling Contract between certain railroads (*c*).

Exhibit 7, Contract between Pennsylvania Railroad and Standard Oil Co., constituting the latter company a so-called "Evener" or regulator of freight shipments (*d*).

Exhibit 8, Arrangement between American Transfer Co. and the Pennsylvania Railroad, relating to the pro-rating of freight charges between the pipe line companies and such railroad.

1. *South Improvement Company contract* (*e*). The promoters of the South Improvement Co., none of whom were connected with the Standard Oil Co., were aiming at a settlement of the difficulties in which the railroads were then involved in relation to apportioning the traffic and maintaining rates (*f*). Mr. Rockefeller and his associates subscribed for only a minority of the stock (*g*). All of the other subscribers were competitors of the Standard (*h*). None of them became stockholders of the Standard Oil Co. until 1875 or three years later (*i*). The Logans, who subscribed for South Improvement stock, never became stockholders of the Standard Oil Co. and were afterwards associated in business with Mr. Emery (*j*), then and since one of the Standard's chief rivals. Two of the chief opponents of the South Improvement Co. were the individual defendants J. D. Archbold and H. H. Rogers (*k*).

(*a*) Petition, Vol. A, p. 116.
(*b*) Petition, Vol. A, p. 124, 127, 129.
(*c*) Petition, Vol. A, p. 131.
(*d*) Petition, Vol. A, p. 136.
(*e*) Exhibit 2, Petition, Vol. A, p. 116.
(*f*) Rockefeller, Vol. 16, p. 3068–9.
(*g*) Petition, Vol. A, p. 12–13. (*h*) Rockefeller, Vol. 16, p. 3071.
(*i*) Rockefeller, Vol. 16, p. 3140.
(*j*) Emery, Vol. 6, p. 2616.
(*k*) Archbold, Vol. 17, p. 3447; Rogers, Vol. 6, p. 3296–7.

The benefits of the South Improvement scheme were open to all refiners and this fact was early made known (*a*). Mr. Rockefeller and his friends did not believe in the plan, but were unwilling to antagonize its promoters, especially Mr. Scott of the Pennsylvania, who was then potent in railroad circles (*b*). The new plan, which aroused great opposition, was short lived. The date of the South Improvement Contract was January 18th, 1872, and the Charter of the Company was repealed March 1, 1872 (*c*). No oil was ever hauled under the contract. No money was ever paid on the subscriptions to its capital stock nor was such stock ever issued (*d*). The actual advance in railroad rates at the time of the South Improvement contract was, as far as appears, uniform as to all shippers, including the Standard Oil Co.; any advantage accruing to the signers of the South Improvement contract having ceased upon its abandonment (*e*). The advance rates were not long in force, and some, at least, of the independent shippers never paid them (*f*). There is no competent evidence that the refineries in the Oil Regions or elsewhere were injuriously affected by the abortive South improvement scheme (*g*), which had nothing to do with the acquisition by the Standard Oil Co. of Cleveland refineries (*h*). The purchase of some of these, and negotiations for the purchase of others, took place in the last part of 1871 (*i*). It was not until January 18, 1872, that the South Improvement Contract was signed. There is no real evidence connecting the contract, or the railroad rates provided for in it, with any subsequent transactions.

2. *Terminal contracts with Erie and New York Central Railroads*—Exhibits 3, 4 and 5 attached to Petition.

(A) There are two terminal contracts with the Erie Railroad (*j*); the first dated April 17th, 1874; the second dated March 1, 1875, being substantially an extension of the first. There is one terminal contract with the New York Central dated

---

(*a*) Rockefeller, Vol. 16, p. 3145–6; Archbold, Vol. 17, p. 3448.
(*b*) Rockefeller, Vol. 16, p. 3069–70.
(*c*) Emery, Vol. 6, p. 2614.
(*d*) Rockefeller, Vol. 16, p. 3070–1, 3141, 3143; Emery, Vol. 6, p. 2722–3.
(*e*) Emery, Vol. 6, p. 2639. (*f*) Lombard, Vol. 1, p. 348.
(*g*) Emery, Vol. 6, p. 2616–7. (*h*) Rockefeller, Vol. 16, p. 3065.
(*i*) Rockefeller, Vol. 16, p. 3138. (*j*) Petition, Vol. A, p. 124, 127.

January 1, 1876 (*a*). There is no evidence that there was ever any contract of this nature between the Standard Oil Co. and the Pennsylvania road. The three terminal contracts referred to contained several provisions substantially similar; thus, all provided that the Standard Oil Co. in charge of the terminals, should assume certain risks which the railroad company would have had to assume, such as the carrier's risk from fire and other causes of loss,—and also the ordinary warehouseman's risk (*b*); also the following provision, substantially the same in all three contracts, that the warehouseman shall (italics ours) (*c*)

> "*make the charges uniform to all parties* who use the yards or for whom services are performed therein and always *as low as any other oil yard* affording proper facilities for the transfer, storage, preparation, and shipment of the oil *at the terminus of any railway* or other line *competing with the Erie Railway*, at or adjacent to the Port of New York, and generally so to manage the premises as to give all patrons of the road fair and equal facilities for their oil business at uniform cost, etc."

The charges which the Standard Oil Co., as manager of the terminals, could make for handling the oil of independent shippers, were limited by the railroads themselves to 18 cents per barrel (*d*). While the charge, in the case of the N. Y. Central, was to be "not less than 18 cents" (*d*), its terminal contract with the Standard required the latter's terminal charges to be as low as those at any other terminal (*e*). This limited the Standard absolutely at its New York Central terminal to 18c. per barrel, the charge fixed by the Erie.

(B) Contracts such as these were not made first with the Standard Oil Co. (*f*). The Erie leased the Weehawken docks to Mr. Bostwick from 1869 to 1872, when he was independent, and he acted as warehouseman for all oil received there, paying the railroad $75,000 per year and making regular terminal charges to all shippers (*f*). The New York Central had had

---

(*a*) Petition, Vol. A, p. 129.
(*b*) Petition, Vol. A. p. 124–5, 126, 130.
(*c*) Petition, Vol. A, p. 125, 127–8, 140.
(*d*) Petition, Vol. A. p. 135.
(*e*) Petition, Vol. A, p. 130.
(*f*) Bostwick, Vol. 6, p. 3309, 3311–12.

similar arrangements with Lombard, Ayres & Co., prior to 1872, and with Bostwick for several years after that date (*a*).

(C) In the conduct of such terminal facilities as are here under consideration, there are necessarily two elements of income—one the owner's compensation for his investment in real estate and equipment and the other the charge for handling and storing the oil. The owner's compensation for his investment is substantially merged in the freight charge and is normally so collected by the railroad, as in this instance by the Erie, which owned its terminal. It is true that the Standard was bound also to pay the Erie Railroad 5c. on every barrel of oil passing through the yards (*b*), but this, no doubt, in the minds of the parties, went to enlarge somewhat the railroad's compensation for its investment at a time when its return from freight was somewhat precarious on account of fierce competition. On the other hand, *the New York Central Railroad owned no terminals for receiving oils, and these were furnished by the Standard* (*c*), which had to be reimbursed, not merely for its services as warehouseman, but for the use of its premises. To this end, in addition to the 18c. per barrel, it was to receive from the railroad, as additional compensation for its "services" (including necessarily the return on its investment in real estate and equipment), a sum which should be equal to 10 per cent. of the freight due the railroad from the Standard Oil Co. upon oil transported for it over said railroad (*d*). There is nothing here open to criticism.

(D) There is no evidence that any unreasonable charges were ever made by the Standard as warehouseman, nor that it was ever paid any charges whatever except those, as aforesaid, fixed by the railroads, nor that it in any particular took advantage of its position to the detriment of any competitor. All statements to that effect are pure assumptions or misreadings of the evidence (*e*).

(E) Mr. Rockefeller's testimony as to the reason for these

(*a*) Bostwick, Vol. 6, p. 3316.
(*b*) Petition, Vol. A, p. 125.
(*c*) Petition, Vol. A, p. 129.
(*d*) Petition, Vol. A, p. 130–1.
(*e*) Rockefeller, Vol. 16, p. 3133, 3136.

terminal contracts is very convincing. He says (*a*) (italics ours):

> "We were handling these large quantities of oil. *We were warehousemen.* We were natural parties to take these warehouses and handle them. It was in our regular business of the receiving and shipping of the oil, * * * *They wanted experienced warehousemen*, who could handle the warehouses in the best manner; * * * In those days especially, when the oil was so largely transported in the wooden packages such as I referred to, often of green wood, with exposures to sun and weather, it required the emptying of the barrel, the recoopering of the barrel, shortening up the hoops, and reglueing the package if necessary, and whatever rendered it acceptable to the purchaser of the oil, before he would consent to its being loaded into the ship. The regular services of warehousemen were performed by us in these cases. *That was a special sort of a service, for which we were eminently fitted.*"

3. *Railroad Pooling Agreement of 1874.* This agreement (*b*) was solely between the Erie, Pennsylvania, Lake Shore and other railroad companies. There are only two provisions of the agreement which are of importance here. The first fixes uniform freight rates from refineries in Cleveland, Pittsburg or the Oil Regions to like seaboard points, as follows (*c*):

Upon refined oil from all initial points:

To New York	$1.90 per bbl.
To Philadelphia and Baltimore	1.75 per bbl.
To Boston	2.00 per bbl.

Upon crude oil from all initial points:

To New York	$1.65 per bbl.
To Philadelphia and Baltimore	1.50 per bbl.
To Boston	1.75 per bbl.

(*a*) Record, Vol. 16, p. 3099, 3100.
(*b*) Petition, Vol. A, p. 131–6.
(*c*) Petition, Vol. A, p. 133.

The second important provision is as follows (*a*) (italics ours):

> "*The roads transporting the refined oil shall refund to the refiners, as a drawback, the charges paid by them upon the crude oil reaching their refineries by rail; and the road transporting through crude oil to the eastern seaboard shall refund to the shippers twenty-two cents per barrel;* both of said drawbacks to be paid only on oil reaching the initial points of rail shipment through *pipes, the owners of which maintain agreed rates of pipeage*, it being understood that the said rates of pipeage shall be equitably adjusted as between the several railroads, *and that they shall be set forth in a contract to be entered into between each pipe line and the trunk lines parties hereto;* such agreed rates of pipeage being of importance to the parties hereto and constituting a valuable consideration to them.
>
> *Oil reaching refineries by pipes direct shall not be entitled to the drawbacks on refined oil.*"

These provisions were intended to place refining points, both in the Oil Regions and at Cleveland, Pittsburg and the seaboard, upon an equality as to cost of transportation, so that the factor of geographical position might be eliminated; whereas, theretofore, all refineries not situated near the wells had been handicapped by having to pay the cost of rail transportation of the crude to the refinery (*b*).

Counsel for the Government have entirely misapprehended the effect of these provisions. The language as to the freight drawback on refined oil is as follows (*c*):

> "The roads transporting the refined oil shall refund to the refiners, as a drawback, the charges paid by them upon the crude oil reaching their refineries by rail."

As to this, two things should be noted: (1) that it enured to the benefit of refineries not merely at Cleveland and Pittsburg, but also in the Oil Regions, as far as they employed rail transportation; (2) that the drawback to such refineries was

---

(*a*) Petition, Vol. A, p. 133.
(*b*) Rockefeller, Vol. 16, p. 3100, 3102; Emery, Vol. 6, p. 3732.
(*c*) Petition, Vol. A, p. 133.

simply of the rail freight and not of the pipe line charge (*a*). Mr. Cassatt, speaking of the situation in 1878, when the ratio of crude to refined was fixed at $1\frac{3}{10}$ barrels of crude to 1 barrel of refined, says (*b*) (italics ours):

> "This rate of $1.90 on refined oil is made from the mouth of the pipe. *We agreed for $1.90 to transport a sufficient quantity of crude oil to the refinery in Pittsburg to make a barrel of refined and to transport that barrel of refined thence to New York.* Now it takes $1\frac{3}{10}$ barrels of crude * * * to make a barrel of refined oil and the refinery having paid 35c. to the A. V. R. R. Co. for each barrel of crude carried (*i. e.*, for the rail shipment) * * * we multiply 35c. by $1\frac{3}{10}$ and we pay that back to the shipper who pays us $1.90 from the refinery to New York * * *. It amounts to $45\frac{1}{2}$c."

The provision that the freight drawback on refined oil and the pipe line refund of 22c. on crude oil should be "paid only on oil reaching the initial points of rail shipment through pipes, the owners of which maintain agreed rates (apparently 30 cents) of pipeage" was essential to the scheme of equality, as appears clearly in the table below.

Finally, refineries receiving oil by pipes direct, without employing railroad transportation, were not entitled to either drawback; (1) not to the railroad freight drawback, for they had not paid it; (2) not to the 22c. on the pipeage charge, since, if the refinery owned the pipe line, as in Emery's case (*c*) it only paid cost, which was certainly less than 30c. (*d*); and, if it did not own the pipe line, it paid not exceeding 30c. In either case, to pay any refund would be to destroy equality. In this agreement $1\frac{1}{3}$ barrels of crude oil are assumed to be the equal of one barrel of refined oil; or, what is the same thing, 4 barrels of crude equal 3 barrels of refined (*e*). The following table makes the whole clear.

(*a*) Emery, Vol. 6, p. 2732; Cassatt, Vol. 20, p. 9, 10.
(*b*) Record, Vol. 20, p. 9–10.
(*c*) Emery, Vol. 6, p. 2730.
(*d*) Emery, Vol. 6, p. 2729.
(*e*) Petition, Vol. A, p. 133.

Net Transportation Cost to New York.

From Cleveland, Pittsburg and all interior refineries employing rail transportation for their crude supply:

Pipe Line charge on 4 bbls. of crude at $.30	1.20	
Railroad freight on 4 bbls. of crude being repaid may be disregarded		
Railroad freight on 3 bbls. refined to New York at $1.90	5.70	
Total		$6.90

From Oil Region refineries not employing rail transportation for their crude supply:

Pipe Line charge on 4 bbls. of crude at not exceeding $.30 per bbl	1.20	
Railroad freight to New York on 3 bbls. of refined at $1.90	5.70	
Total		$6.90

New York Refineries:

Pipe lines charge on 4 bbls. of crude at $.30	1.20	
Railroad freight on 4 bbls. of crude at $1.65	6.60	
Total		$7.80
Drawback on 4 bbls. of crude at $.22		.88
		$6.92

Thus, the transportation costs to the three classes of refineries were made substantially identical; though refineries like Emery's, reached by pipe lines direct (*a*), had the advantage of all they saved on pipe line charges below 30 c. Where the refinery and the pipe line belonged to the same people, this saving must have been large; so that *Emery's refinery had an important advantage over Pittsburg and Cleveland, instead of being at a disadvantage,* as he claims and as is asserted by the Government. If he subsequently was unable to continue in business, it was evidently because he could not compete against Pittsburg and Cleveland, even on better than equal terms.

(*a*) Emery, Vol. 6, p. 2726.

There is no certain evidence as to which were the pipe lines, whose owners maintained "agreed rates of pipeage." The alleged Pooling Agreement, Petitioner's Exhibit 770 (*a*), dated September 4, 1874, names as parties only the following:

United Pipe Lines (Partnership).
Sandy & Milton Lines.
Relief Pipe Line Co.
American Transfer Co.
Union Pipe Line Co.
Grant Pipe Line Co.
Karns Pipe Line Co.
Antwerp Pipe Co.
Oil City Pipe Co.
Pennsylvania Transportation Co.

In only two of these had the Standard Oil Co. at that time any interest whatever, to wit, a one-third interest in the United Pipe Lines (*b*), which was to have 29½ per cent. of the oil in the pool (*c*), and the whole of the American Transfer Co., which had 7 per cent. in the pool. In other words, the Standard's interest in the alleged pool was at most 17 per cent. in all (*b*). Nor were any of the remaining concerns acquired by the Standard until after April, 1877 (*d*), nearly three years later than the date of the alleged pipe pooling agreement. Furthermore, an examination of the map of existing pipe lines in 1874 (*e*) shows that every line on the map was included in the list of signers of the alleged pipe line pooling agreement, except the Columbia Conduit Co., which supplied oil only to Pittsburg refineries direct (*f*), and therefore would not in any event be entitled to the benefit of the drawbacks, and except also the following:

Rochester & Coraopolis Pipe Co.
Hickory Line.
Octave Pipe Co.
Titusville Pipe Co.
New York Pipe Co.
Church Run.

(*a*) Record, Vol. 10, p. 1817-21.
(*b*) Rockefeller, Vol. 16, p. 3223.
(*c*) Pet. Ex. 770, Vol. 10, p. 1820.
(*d*) Campbell, Vol. 6, p. 3321.
(*e*) Def. Ex. 258 (not printed).
(*f*) Irwin, Vol. 6, p. 3015.

The Octave was Emery's line and delivered oil only to Emery's refinery (*a*). There remain only five others not accounted for. But Emery says (*b*) that *twenty-two* pipe lines got the benefit of the 22c. rebate. There are but eleven signers to the alleged pipe pooling agreement (*c*), and the record is silent as to who the others were; they presumably included the said five lines. Hence, no possible claim of discrimination can be made.

Emery's assertion that the arrangement was secret is absurd in the face of his admission (*d*) that the so-called "Rutter circular" was issued broadcast by the railroads to all refiners and shippers on October 1st, 1874, when the railroad pooling agreement went into effect, and that it set forth the provisions of that agreement, particularly as to the drawback of 22c.

4. *Contract between Pennsylvania Railroad and Standard Oil Co.* (*e*). This agreement, dated October 17th, 1877, recites an arrangement between the Trunk railroads for a division of eastbound oil traffic, whereby the Pennsylvania Railroad should carry to New York 21 per cent. of the whole, and to Philadelphia and Baltimore 26 per cent., or 47 per cent. in all. With the fixing of these proportions, as far as appears, the Standard had nothing to do. Similar traffic arrangements between railroads continued to be made and were regarded as legal down to the passage of the Interstate Commerce Act of 1887. By the terms of this agreement, the Standard Oil Company undertook to regulate its shipments of oil over the Pennsylvania's lines, so that the entire oil business of the Pennsylvania to New York, Philadelphia and Baltimore collectively should amount to the 47 per cent. of the total oil traffic above referred to. The Standard was thus constituted what was known at that time as an "Evener," which was the name applied to a large

---

(*a*) Emery, Vol. 6, p. 2726.
(*b*) Record, Vol. 6, p. 2725.
(*c*) Pet. Ex. 770, Vol. 10, p. 1817.
(*d*) Record, Vol. 6, p. 2728-9.
(*e*) Exhibit 7, Petition, Vol. A. p. 136.

shipper in any particular line who assumed the task of ensuring a certain distribution of traffic among different railroads. This plan was at that time common in relation to all kinds of large traffic (*a*). Mr. Rockefeller testified (*b*):

> "We made the shipments to conform to their agreements as to divisions, and that was done from time to time in quantities to enable them to carry out the divisions of the traffic and secure for themselves fair transportation rates."

This, he says very positively, the Standard interests often did to their own disadvantage, shipping oil to Philadelphia when, under normal conditions, they would have shipped it to New York (*c*). In return for its services, the Pennsylvania agreed to pay the Standard a commission of not less than (and which in practice actually was) 10 per cent. of the freight upon the Standard's own shipments of oil over the Pennsylvania lines. The railroad agreed not to pay a like commission to any other shipper, unless the latter guaranteed an equal amount of traffic. Such provisions were common at that period (*d*). This contract imposed obligations upon the Standard Oil Co. that fully offset any advantages to be derived from it. It is doubtful whether there was any real profit to the Standard under the contract. Ten per cent. commission was not then considered an unreasonable compensation for the services rendered in the "evening" process involved in such a contract (*e*). Cassatt's statement to Lombard that "the Standard was the only company that could make peace between the railroads" (*f*), of course, referred to the "evening" function assumed by the Standard and was testimony to the value of the latter's services.

5. *Arrangement between American Transfer Co. and Pennsylvania Railroad Co* (*g*).

The correspondence in this Exhibit related to an arrange-

(*a*) Archbold, Vol. 17, p. 3450.
(*b*) Record, Vol. 16, p. 3090.
(*c*) Record, Vol. 16. p. 3090,[3118.
(*d*) Petition, Vol. A, p. 145.
(*e*) Archbold, Vol. 17, p. 3450-1.
(*f*) Lombard, Vol. 1, p. 252.
(*g*) Exhibit 8, Petition, Vol. A, p. 138-40.

ment between the two companies above named, whereby the Pennsylvania was to pay the American Transfer Co., a pipe line concern, 20c. per barrel on certain oil transported by the Railroad company. It is not disputed by the Appellants that for a short period only (*a*), following February 1, 1878, this payment was made on all the oil delivered to the Pennsylvania Railroad, to the N. Y. Central and to the Erie by the American Transfer Co. and by the United Pipe Lines. There is no competent evidence in the case that such payments were made upon any oil not so delivered.

It is not necessary, however, to rest the defense of this transaction upon any technical point of evidence. In 1878 the American Transfer Co. and the United Pipe Lines were both owned by Standard interests (*b*). As pipe line companies, they were in law quite distinct from the shippers whose oil passed through the pipes. The American Transfer Co. itself, even in 1878, was a small affair, having only from two to three hundred miles of gathering lines (*c*). The United Pipe Lines was much larger. The two concerns together, in 1878, by the testimony of Lee, a most hostile witness, did 90 per cent "of the business of collecting crude oil from the wells" (*d*), or in other words, transported 90 per cent. of the crude oil production in that year. There is no evidence that any of the remaining ten per cent. was delivered to any of the three trunk lines. The total production of crude in 1878 was about 15,000,000 barrels (*e*), ten per cent. of which would be 1,500,000 barrels. But much of this ten per cent. must have been used by independent refineries supplied by pipe lines direct, of which there were a number: among them, Union Refining Co. at Oil City (*f*), Waverly Oil Works, Miller's Oil Works, Empire Oil Works and others at Pittsburg (*g*); Emery gives the capacity of Miller's Oil Works in 1879 as 5238 barrels per week (*h*), equivalent to 272,376 barrels per

---

(*a*) Record, Vol. 8, p. 1497.
(*b*) Record, Vol. 6, p. 3321, 3293.
(*c*) Record, Vol. 6, p. 3293.
(*d*) Record, Vol. 6, p. 3153.
(*e*) Def. Ex. 265, Vol. 19, p. 624.
(*f*) Def. Ex. 272, Vol. 19, p. 644.
(*g*) Record, Vol. 6, p. 3013, 3015, 3131-2.
(*h*) Record, Vol. 6, p. 2630.

year. If the other independent refineries above mentioned were of similar capacity, the entire ten per cent. of the production in 1878 would have been taken up by them. Moreover, the independent shippers (except Malcolm Lloyd, of Philadelphia) through 1878 shipped only over the Equitable Pipe Line (an independent concern) and the Buffalo & McKean Railroad to Buffalo and thence by the Erie Canal (*a*). It is quite probable, therefore, that no crude oil whatever and certainly very little, (except that collected by the Standard's pipe lines), was in 1878 delivered to the railroad trunk lines, or any of them (*b*). It is evident that Mr. Cassatt did not clearly understand the relations between the American Transfer Co. and the United Pipe Lines, nor the extent of the latter's system (*c*), and his testimony that the payment was made on other oil than that brought by the American Transfer Co. no doubt referred to oil delivered by some branches of the United Pipe Lines not known to him to be such.

This being so, it is entirely immaterial that the Standard's pipe line companies may have received the 20c per barrel on some oil passing through their lines and belonging to other than Standard shippers, for the payment was not made to the shippers but to the pipe lines as carriers and as a commission for gathering the oil in the field and bringing it to the Pennsylvania road. It had nothing to do with the shipments over the road (*d*). In other words, this was an arrangement whereby *the railroads and the pipe line companies as connecting carriers pro-rated the freight on the oil.* These pipe line companies were then incurring vast expense in extending their pipeage and storage capacity in the effort to cope with the increasing production of crude oil, which rose from 9,000,000 barrels in 1876 to over 15,000,000 barrels in 1878 (*e*). Through their outlay the traffic and profits of the railroads were largely augmented. Is it surprising that the American Transfer Co. should ask for a

---

(*a*) Emery, Vol. 6, p. 2649; Lombard, Vol. 1, p. 257-8; Cassatt, Vol. 20, p. 18, 31.

(*b*) Archbold, Vol. 17, p. 8452.

(*c*) Cassatt, Vol. 20, p. 19.

(*d*) Cassatt, Vol. 20, p. 6; Justice, Vol. 3, p. 1497; Archbold, Vol. 6, p. 3276.

(*e*) Record, Vol. 6, p. 3288; Rockefeller, Vol. 16, p. 3095.

fair share of those increased profits? In any event, the arrangement was short lived (*a*).

CHAPTER V.

Early Concessions in Freight Rates.

I. There is considerable evidence as to the allowance by railroads to the Standard interests and to others, during the seventies, of concessions on freight charges. In considering this evidence, counsel for the Government have criticized the taking of such concessions according to the standards and the law of the present time. This is quite unjustifiable. Whatever was done is to be judged by the standards, conditions and law of those days. It was a time of intense struggle between the trunk lines for every kind of traffic, with alternating short periods of agreed rates or pooling. The schedule rates were merely nominal, and railroad transportation, not merely in the oil business, but generally, was bought and sold like any other commodity; the question of rates being one of contract between the shipper and the railroad. It was in fact obligatory on every shipper to make the best contract he could, if he expected to succeed (*b*). The shipper who furnished a large and steady volume of traffic considered that he was entitled to lower rates because of that fact. There was legal authority for this claim.

Nicholson v. Great Western Ry. Co., 4 C. B. (N. S.) 366.
Cleveland &c. R. R. Co. v. Closser, 126 Ind., 348.
Oxlade v. N. E. Ry. Co., 1 Ry. & Can Traf. Cases, 72.
Root v. L. I. R. R. Co., 114 N. Y., 300.

Nor must it be forgotten (whatever view be taken of those freight concessions, based upon their assumed illegality) that the evidence concerning them is material in this case only as bearing on the charge that they were a weapon of oppression, whereby competitors were compelled either to go out of business or to sell out to the Standard, for which charge, as already shown (*ante*, p. 42), there is absolutely no foundation.

II. There is ample evidence in the case that others than

(*a*) Record, Vol. 3, p. 1497.
(*b*) Record, Vol. 6, p. 3026-7, 262; Archbold, Vol. 17, p. 3446-7, 3454-5.

the Standard Oil interests received substantial concessions on freight rates and some of them, at least, quite as large as any obtained by the Standard (*a*). In 1878, as more fully shown below, the Pennsylvania made the same allowances to Malcolm Lloyd, of Philadelphia, as to the Standard, he being then the only other shipper of crude over the trunk lines to the seaboard (*b*). Mr. Lloyd was then entirely independent and did not become connected with the Standard Oil Company until nine years later (*c*).

III. Specific instances of reduced freight rates.

1. There is no competent evidence of the payment or allowance to the Standard Oil interests of any specific drawback on freight rates prior to those given, after October 1st, 1874, under the Railway Pooling Agreement (*d*) to all refiners who came within its terms. This has already been fully explained *(ante,* p. 47–52), as have also other allowances subsequently made to the Standard. In the rate war in the summer of 1877, due to the trouble over the Empire Transportation Co. *(ante,* p. 24), low rates were made on the Erie and New York Central, which were a part of the effort to compel the Pennsylvania Railroad to go out of the refining business and had no other basis. As soon as the Pennsylvania agreed to the terms of the other railroads in this matter, the old rates were restored (*e*).

2. The only other specific instances of reduced rates to the Standard are those occurring in 1878 (*f*). They lasted only from July to December, 1878 (*g*). The reductions were agreed to in July of that year at a conference held at Saratoga by representatives of the Pennsylvania and the other trunk lines (*h*), because the independent shippers, except Malcolm Lloyd, had transferred their shipments to the opposition route over the Equitable Pipe Line, the Buffalo & McKean Railroad and the Erie Canal (*i*). By that route they shipped oil from the Oil

---

(*a*) Emery, Vol. 6, p. 2774, Lombard, Vol. 1, p. 261-2, 265-,6 Archbold, Vol. 17, p. 3241-2.

(*b*) Cassatt, Vol. 20, p. 13.

(*c*) Emery, Vol. 6, p. 2800; Archbold, Vol. 6, p. 3281.

(*d*) Exhibit 6, Petition, Vol. A, p. 131.

(*e*) Cassatt, Vol. 20, p. 23–4; Rockefeller, Vol. 16, p. 3089.

(*f*) Cassatt, Vol. 20, p. 18–20. (*h*) Cassatt, Vol. 20, p. 10–11.

(*g*) Cassatt, Vol. 20, p. 19, 31. (*i*) Cassatt, Vol. 20, p. 30–31.

Regions to New York for 70c per barrel (*a*). To meet this low rate of the opposition route, the rates to New York over the Pennsylvania, Erie and New York Central were reduced to 80c per barrel on refined and to 88½c per barrel on crude (*b*). This made the rate to Philadelphia proportionately less, that on refined becoming 66⅔c (*c*). The reduced rates were extended to Malcolm Lloyd and the Standard interests, there being no other shippers over the Pennsylvania, nor apparently over the other trunk lines (*d*). It is thus absolutely immaterial what or how large these much discussed allowances in 1878 were, for they were not discriminatory. They were made to the only remaining shippers of oil over the trunk lines and the rates resulting from the reductions were not so low as those over the Erie Canal route enjoyed by independent shippers at the same time. Why the independents shipped over the new route is immaterial, in view of the admitted fact that they did so ship at the low rate of 70c. per barrel to New York. As soon as the Canal froze, or about December 8th, 1878, the special reductions came to an end and the old rates were resumed for the Standard people and for Lloyd, as well as others (*e*).

3. Against objections on the score of hearsay and incompetency, Mr. Farquarson testified (*f*) that when he was an employee of the Baltimore & United Oil Co., owned by the Standard, he was told by Mr. West, then manager of the Baltimore Co., that, prior to its organization, a portion of the freight paid by the firm of West & Sons had found its way to the Standard. The attempt to make this hearsay evidence competent under the co-conspirator rule cannot be taken seriously. The conspiracy, if any, was between the Standard and some other parties not named and prior to the organization of the Baltimore Co. Farquarson was not a party to any such conspiracy nor does it appear that West was. In any event, the testimony should be barred as a narrative of past facts made after the alleged conspiracy had come to an end.

Logan v. United States, 144 U. S., pp. 263, 308.

(*a*) Emery, Vol. 6, p. 2650.
(*b*) Cassatt, Vol. 20, p. 15.
(*c*) Archbold, Vol. 6, p. 3238.
(*d*) Cassatt, Vol. 20, p. 15, 18, 30, 31.
(*e*) Cassatt, Vol. 20, p. 31.
(*f*) Record, Vol. 5, p. 2218.

4. The contracts dated January 29th, 1880, and April 27th, 1880 (*a*), provided for an entire abolition of rebates and special rates (*b*).

5. There is an entire lack of evidence that the purchase of any refineries or the abandonment of business by any competitors was due to any special advantage in railroad rates enjoyed by the Standard. These charges must therefore fail.

6. In this connection Mr. Archbold's testimony (*c*) is very illuminating.

> "I know of no refiners that went out of business except voluntarily and amicably. They went out if at all because of their own desire and a realization that their properties, being of the early primitive class, were not fitted to survive as against the newer and better class of construction that was being created in the business."

CHAPTER VI.

From the formation of the Standard Oil Trust on January 1, 1882, to the date of the Sherman Act July 2, 1890.

I. During this period the stocks transferred to the trustees in 1882 continued to be held by them in trust for the beneficial owners. In like manner the trustees either held directly such additional stocks and other properties as were acquired, including the stocks of new Standard companies organized by them or under their direction, or else such stocks and properties were vested in some one of the old companies whose stock was already held by the trustees. In either event, all the stocks and properties, whether acquired prior or subsequent to 1882, continued to be held as a common property for the benefit of the same group of owners, each owner having the same proportionate interest in

---

(*a*) Exhibit 10, Petition, Vol. A, p. 141–4.
(*b*) Petition, Vol. A, p. 20.
(*c*) Record, Vol. 17, p. 3447.

each constituent of the total property, according to the number of shares of trust certificates held by him. As already stated this period was essentially one of internal development. Under the powers vested in them by the trust agreement (*a*) the trustees caused to be organized in various states a number of large new marketing and refining companies, the entire capital stock of which was, at the time of their organization, subscribed for by the trustees and paid for either entirely with cash out of the common funds in the hands of the trustees (as in the case of the Solar Refining Co. and the Standard Oil Co. of Indiana), or else partly with cash and partly by the transfer of property previously owned by the Standard Oil Co. of Ohio (as in the case of the Standard Oil Co. of New Jersey and the Standard Oil Co. of New York). Omitting companies wound up in or prior to 1892 and omitting the Standard Oil Co. of Iowa, which has since been liquidated, the following are the marketing and refining companies referred to which were organized at the instance of the trustees during the period in question: Standard Oil Co. of New Jersey (1882), Standard Oil Co. of New York (1882), Continental Oil Co. (1885), Solar Refining Co. (1885), Standard Oil Co. of Kentucky (1886), Standard Oil Co. of Indiana (1889). Extensive new refining and marketing properties were built by these new companies. So also the various refining properties acquired before 1882, as well as one or two acquired after that date, were greatly enlarged.

During the same period (1882–1890), at the instance of the trustees, the following new pipe line companies were organized by the National Transit Co., their entire capital stock in each instance being subscribed for by the latter company and paid for entirely with cash from the treasury of the National Transit Co. (*b*)—except in the case of the Northern Pipe Line Co., and the Buckeye Pipe Line Co. where payment was made partly with cash and partly with property previously constructed by the National Transit Company for its own needs, to wit: Southwest Pennsylvania Pipe Lines (1885), Buckeye Pipe Line Co. (1886), Northern Pipe Line Co. (1889), Eureka Pipe Line Co. (1890), Southern Pipe Line Co. (1890).

(*a*) Petition, Vol. A, p. 23.
(*b*) Record, Vol. 19, p. 641.

II. The refining properties purchased after January 1, 1882, are enumerated in the Table of Acquisitions (*a*). Most of them were very small. All but a few were acquired outright for cash. *In every case apparently the purchase was of a refinery per se.* There is no evidence that any of the properties so acquired were obtained by coercion or otherwise than by fair dealing. Emery's second refinery was bought in 1887, after running for seven years (*b*), for $275,000 (*c*), which was its full value, it having cost $350,000 and all refinery property being subject to great and rapid depreciation in value (*d*). Emery sold because of difficulty in getting cars from the Pennsylvania railroad (*i*). Two years later, in 1889, Emery built a third refinery with capacity of 250 barrels per day, which increased by 1895 to 1,000 barrels per day and has now reached 1,500 barrels per day, During the same period, his investment has increased from $5,000 to about $600,000 (*e*). Reighard sold the two Globe refineries because the sale showed him a large profit (*f*).

Of the marketing concerns acquired from 1882 to 1890, all except two were purchased wholly, and those two largely, for cash. Not more than three or four of them did business outside of a single state. The others were small local marketing concerns with a business confined to a single city and its vicinity, or at most to a few places in the same state (*g*).

During this period (1882-90), but two pipe line acquisitions are charged against the defendants, to wit : one the Pittsburg Pipe Line and the other a minority interest in the Western & Atlantic Pipe Line Co. The former consisted of three small pipes aggregating not over 44 miles in length, and the latter of a small gathering system, both properties entirely within the State of Pennsylvania, and purchased with the refineries by whose proprietors they were owned (*h*).

III. The Anglo-American Oil Co. was organized under the laws of Great Britain in 1888 by the trustees, who subscribed for its entire stock and paid for the same in cash (*j*). It was

---

(*a*) Appendix, I., p. 252-3.
(*b*) Record, Vol. 6, p. 2642.
(*c*) Record, Vol. 6, p. 2767.
(*d*) Emery, Vol. 6, p. 2738.
(*e*) Emery, Vol. 6, p. 2769, 2693.
(*f*) Reighard, Vol. 6, p. 3135.
(*g*) Appendix, I., p. 256-8.
(*h*) Record, Vol. 6, p. 3019-20, 3134.
(*i*) Record, Vol. 6, p. 2644-5.
(*j*) Archbald, Vol. 17, p. 3338.

organized to market the products of petroleum in the United Kingdom and has never done any other business (*a*). No charge of monopolizing has been made or can be sustained as to this company.

IV. By 1890 a number of the companies theretofore acquired had been wound up. A number of the purchased refineries had been destroyed by fire—as at Titusville (*b*). So also a considerable number had been discontinued, because their construction did not fit them for economical use in competition with improved new refineries of better situation. As far as possible, their contents were used in construction elsewhere (*c*).

V. Omitting certain new corporations organized and a few acquired by Standard interests after July 2, 1890, the companies whose stocks were on that date held by the trustees or by other companies whose stocks were then held by the trustees, and their properties, included substantially all the important companies and properties, owned by the Standard Oil Co. of New Jersey or its subsidiary companies in 1906, except so far as those properties had in the meantime been enlarged and developed with money derived from the common funds.

Facing this page is a table showing the status on July 2, 1890, of all the now existing appellant companies; also the status on the same date of properties which on November 15th, 1906, were held by any of said appellant companies and which were derived primarily from independent concerns, except properties destroyed by fire or sold, and omitting marketing companies whose business was confined to a single state.

CHAPTER VII.

From July 2nd, 1890 to 1899.

FIRST: DISSOLUTION OF THE TRUST.

I. The various stocks and properties belonging to the Standard Oil interests continued to be held and managed after

---

(*a*) Record, Vol. 19, p. 642.
(*b*) Archbold, Vol. 17, p. 3296.
(*c*) Archbold, Vol. 17, p. 3260.

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; ALSO STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED PRIMARILY FROM INDEPENDENT CONCERNS.

DOMESTIC, REFINING, MARKETING AND PRODUCING COMPANIES.

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interests. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
Anglo-American Oil Co. Ltd.		Yes, by Trustees (entire stock)	Yes—1888	No	Markets in United Kingdom. No other business. (19:642)
Atlantic Refining Co.		Yes, by Trustees (entire stock)	No	Stock—1875	
	Acme Oil Co. of Pennsylvania.	Yes, by Trustees (entire stock)	Yes—1879	Part of property—1875	Acquired Pennsylvania properties of Acme Oil Co. of N. Y. originally acquired 1875. Refineries at Titusville destroyed by fire. (19:673)
	Bush & Co., Ltd.	Yes, by Acme Oil Co. of Pennsylvania (Property)	No	Entire stock—1880	Company liquidated 1882 and property transferred to Acme Oil Co. of Pennsylvania. (19:673)
	Eclipse Lubricating Oil Co.	Yes, by Trustees (entire stock)	Yes—1878	Property acquired 1878	Acquired Eclipse Works at Franklin, Pa. About 91 per cent. of stock bought 1878; balance 1882. (19:679)
	Paine, Ablett & Co.	Yes, by Standard Oil Co. of Pittsburg (entire stock)	Yes 1878	Property—1878	Took over refineries at Smith's Ferry and Freedom, Pa. (19:647)
	Solar Oil Co. Ltd.	Yes, by Trustees (entire stock)	No	Entire stock—1880	Small refinery at Williamsport (19:635)
	Central Refining Co. of Pittsburg.	Yes, by Trustees (⅔ stock)	No	Two-thirds of stock 1876; balance of stock in 1883	Refinery at Pittsburg (19:644)
	Globe Refining Co. of Pittsburg.	Yes, by Trustees (entire stock)	No	Entire stock Feb. 6, 1890	Refinery at Pittsburg (19:644)
	Globe Refining Co. of Philadelphia.	Yes, by Trustees (entire stock)	No	Entire stock Feb. 6, 1890	Refinery at Philadelphia (19:644)
	Philadelphia Refining Co.	Yes, by Atlantic Refining Co. (entire stock)	No.	Entire Stock—1877.	Part property of Empire Transportation Co. 16: 3086, 3088-9.
	Standard Oil Co. of Pittsburg.	Yes, by Trustees (entire stock)	No.	Entire Stock—1874.	Refinery at Pittsburg. 19: 675.
Borne-Scrymser Co.		No.	Yes—1893.	Property acquired—1893.	Took over property of Borne-Scrymser & Co. previously purchased. 19: 682.

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; ALSO STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED PRIMARILY FROM INDEPENDENT CONCERNS.

DOMESTIC, REFINING, MARKETING AND PRODUCING COMPANIES—(*Continued*).

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interests. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
Chesebrough Mfg. Co. Ltd.		Yes, by Trustees (55 per cent of stock)	No.	Majority stock—1881.	Minority of stock outstanding. 19: 677.
Colonial Oil Co.		No.	Yes—1901.	No.	Organized by Standard Oil Co. of New Jersey, which paid for and holds its entire stock. 19: 642.
Continental Oil Co.		Yes, by Trustees (Large majority of stock)	Yes—1885.	Small property—1885	Acquired small marketing business for minority of stock, which was bought in 1892. 19: 634.
Galena Signal Oil Co.		No.	Yes—1901	Properties—1879	Successor of Signal Oil Works Ltd. and Galena Oil Works, Ltd. Minority stock outstanding. 19:634.
	Signal Oil Works, Ltd. Galena Oil Works, Ltd.	Yes, by Trustees (Majority of stock)	No	Stock—1879	Two companies associated in business and acquired in a single transaction.
Ohio Oil Co.		Yes — Entire Stock	No	Small original stock bought 1889.	320,000 out of 400,000 shares issued to and paid for by Standard Oil Co. of New Jersey in 1907; owns producing properties in Ohio, Indiana & Illinois. Also private pipe line constructed with money furnished by Standard Oil interests. (19:638)
Solar Refining Co.		Yes, by Trustees (Entire stock)	Yes—1885	No	Built and owns refinery at Lima, Ohio 19:635.
South Penn Oil Co.		Yes, by Trustees (entire stock)	Yes—1889	No	National Trans. Co. took and paid for entire stock. Owns producing properties in Pa. field. 19:638.
Standard Oil Co. of California, (formerly Pacific Coast Oil Co.)		No.	No	Entire stock — 1900 for cash.	Company with small property bought for $761,000 cash. Assets of Company in 1906 over $17,000,000. (19:635)
Standard Oil Co. of Indiana.		Yes, by Trustees (entire stock)	Yes—1889	No	Owns refineries built by itself at Whiting and Sugar Creek. Value of assets in 1906, $24,302,043.37. 19:635.
	P. C. Hanford Oil Co.	Yes, by Trustees (entire stock)	Yes—1883	Marketing stations of small value of P. C. Hanford in 1883	Majority stock in 1883; minority March 7, 1890. 19:646.

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; ALSO STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED PRIMARILY FROM INDEPENDENT CONCERNS.

DOMESTIC, REFINING, MARKETING AND PRODUCING COMPANIES—(*Continued*).

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interests. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
	Consolidated Tank Line Co.	Yes, by Trustees (entire stock)	Yes—1878	Marketing business of Alexander, McDonald & Co. for minority stock.	Stock acquired—majority 1878 and balance April 12, 1890. 19:677.
	Des Moines Tank Line Co.	Yes, by Trustees (entire stock)	No	Entire stock June 20, 1890 for cash.	Local marketing company at Des Moines, Sioux City and Omaha. 19:646.
	Scofield, Shurmer & Teagle	No		Property—1901	Properties purchased by Republic Oil Co. since liquidated. 19:650
Standard Oil Co. of Kansas		No	Yes—1892	No	Refinery and Marketing stations in Kansas. All built with Standard capital. 19:635.
Standard Oil Co. of Kentucky		Yes, by Trustees (entire stock)	Yes—1886	Part of property—1886	Purchased business of Chess-Carley & Co., acquired 1873. 19:635.
	Chess-Carley & Co.	Yes, by Standard Oil Co. of Kentucky.	Yes—1881.	Property of firm of Chess-Carley & Co. acquired 1873-1881.	Marketing company in Southern States.
	Inland Oil Co.	Yes, by Trustees (50 per cent. of stock)	Yes—1880	Property—1880	Purchased marketing business of Hamilton & Miller. Minority stock acquired 1891. 19:677.
	White's Golden Lubricator Co.	Yes, by Trustees. (entire stock.)	No.	Entire stock—1889.	Marketing business. Headquarters Cincinnati. 19 : 647.
Standard Oil Co. of Nebraska.		No.	Yes—1906.	No.	Marketing stations only in Nebraska. All stock taken and paid for in cash by Standard Oil Co. of N. J. 19 : 635.
Standard Oil Co. of New Jersey.		Yes, by Trustees. (entire stock.)	Yes—1882.	No.	19 : 633.
	Producers Consolidated Land & Petroleum Co.	Yes, by Trustees. (majority stock.)	No.	Stock—majority in 1877-79; balance in 1896.	Small refinery at Bayonne and production in Penn. 19 : 679.
	Camden Consolidated Oil Co.	Yes, by Trustees (entire stock).	Yes—1875.	Acquired refineries at Parkersburg.	19:673.
	Baltimore United Oil Co.	Yes, by Trustees (entire stock).	Yes—1877.	Refineries in Baltimore.	19:676.
	United Refiners Export Co.	Yes, by Trustees (entire stock).	No.	Entire stock 1886.	Marketing business at Perth Amboy, New Jersey. 19:647.
Standard Oil Co. of New York.		Yes, by Trustees (entire stock)	Yes—1882	No	19:636

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; AND STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED PRIMARILY FROM INDEPENDENT CONCERNS.

DOMESTIC, REFINING, MARKETING AND PRODUCING COMPANIES—(*Continued*).

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interests. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
	Long Island Oil Co.	Yes, by Standard Oil Co. of New York, (physical property.)	No	Entire stock purchased 1873	Physical property had previously been vested in Standard Oil Co. of Ohio, by which it was transferred to the Standard Oil Co. of N. Y. in 1882 (19:619)
	Devoe Manufacturing Co.	Yes, by Trustees (entire stock)	No	90 per cent. of stock purchased 1874. Balance 1882.	19:679
	Chas. Pratt & Co.	Yes, by Trustees (entire stock)	No	Entire stock purchased 1874	Name changed to Pratt Mfg. Co. in 1884. 19:674
	Sone & Fleming Mfg. Co.	Yes, by Trustees (entire stock)	No	Entire stock purchased 1877	Acquired in settlement of Empire Transportation matter (19:675)
	Atlas Refining Co.	Yes, by Trustees (entire stock)	No	Entire stock purchased 1882.	Purchase price in 1882 $84,000. Value of works in 1906, $1,466,060.63 17:3253; 19:627. 19:644
	Vesta Oil Works.	Yes, by Standard Oil Co. of New York, (Physical property.)	Yes—1882	Refinery purchased previous to 1882.	Company took over refinery in 1882 and transferred same to Standard Oil Co. of N. Y. in 1884, the company being liquidated. 19:645
	Empire Refining Co.	Yes, by Trustees, 80% of stock.	No.	80% of stock purchased in 1880—20% 1891; all for cash.	Refinery on Newton Creek now held by Standard Oil Co. of New York. 19:634, 680
	Bush & Denslow Mfg. Co.	Yes, by Trustees (50% of stock)	No	½ stock purchased for cash in 1880 and remainder for cash in 1892.	19:676
	Maverick Oil Co. Beacon Oil Co.	Yes, by Trustees (entire stock) Yes, by Trustees (entire stock)	Yes Yes	Took over small refineries of Maverick Oil Works and Carter, Windsor & Co. at Boston, purchased in 1877. Took over refinery & business of Kidder, Vaughn & Co. previously owned by Maverick Oil Co.	All these small properties were controlled by a single interest and acquired in a single transaction (17:3272, 3357).

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; ALSO STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED PRIMARILY FROM INDEPENDENT CONCERNS.

DOMESTIC, REFINING, MARKETING AND PRODUCING COMPANIES—(*Continued*).

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interest. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
	Portland Kerosene Oil Co.	Yes, by Trustees (entire stock)	No	Entire stock purchased by trustees 1878 to 1886.	Small refinery and oil yard at Portland, Maine. 19:679.
	Thompson & Bedford Co.	Yes, by Trustees, 80% of stock.	Yes—1880	Took over interest in partnership of Thompson, Bedford & Co.	Marketing and export business in lubricating oils. 19:679
	Central Refining Co. (Ltd.)	Yes, by Trustees, (66⅔% of stock.)	No.	Majority of stock acquired in 1883. Balance in 1900.	Small refinery on Newtown Creek.
Standard Oil Co. of Ohio.		Yes, by Trustees, (entire stock.)	Yes—1870	No.	The original Standard Oil Company. 19:636, 674
	American Lubricating Oil Co.	Yes, by Standard Oil Co. of Ohio, physical property.	Yes—1878	Took over property of American Lub. Oil Co. and Mica Steam Packing & Axle Grease Co. Purchased in 1877 for cash.	Lubricating Oil plants at Cleveland. Non-competing. Minority stock acquired 1882. Company liquidated 1888. 19:676
	West Michigan Oil Co.	Yes, by Trustees (entire stock).	No.	Entire stock purchased 1888.	Small marketing business in West Michigan (19:647).
Swan & Finch Co.		Yes, by Thompson & Bedford —½ interest in property.	Yes—1891.	Took over firm of Swan & Finch in 1891.	Seventy-five per cent. of stock acquired in 1891; balance in 1894; compounding and marketing lubricating oils. 19:636.
Union Tank Line Co.		No.	Yes—1891.	Some tank cars.	Trustees took and paid for entire stock upon organization. 19:637.
Vacuum Oil Co.		Yes, by Trustees 75% of stock.	No.	Seventy-five per cent. of stock acquired 1879; balance 1900—all for cash (19:681).	Manufactures and sells lubricating specialties. 19:637, 681.
Washington Oil Co.		Yes, by Trustees (71 per cent of stock)	No	71 per cent. of Stock —1890	Producing properties in Pennsylvania 19:639
		PIPE LINE COMPANIES.			
National Transit Co.		Yes, by Trustees 97% of stock.	Yes—1881	Acquired in 1881 94 per cent. of stock of United Pipe Lines and other properties previously owned by Standard Oil Inter.	19:641, 678.

PAGE CUT OFF

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; ALSO STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED PRIMARILY FROM INDEPENDENT CONCERNS.

PIPE LINE COMPANIES—(*Continued*).

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interests. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
	United Pipe Lines Organized to take over the following: Antwerp Pipe Co. Pennsylvania Transportation Co. Union Pipe Co. Grant Pipe Line Relief Pipe Line Karns Pipe Line Hunter & Cummings Sandy Pipe Co. Milton Pipe Line Keystone Pipe Co. Oil City Pipe Co. Clarion Pipe Line	Yes, by National Transit Co. (entire stock)	Yes—1877	Entire stock acquired 1877 to 1882	Properties consisted chiefly of the lines of the 12 small companies next enumerated. 19:648.
		Yes, by National Transit Co.	No	Property or stock acquired 1877	These twelve concerns form a group of very small gathering pipe lines aggregating not over 220 miles in total length, all situated entirely within the State of Pennsylvania. (*post*, Appendix I, p. 15)
	Columbia Conduit Co.	Yes, by National Transit Co. (entire stock or property)	No	Entire stock purchased 1877	Small pipe line about 48 miles long entirely within State of Pennsylvania. 6:3015, 3323-6-7
	American Transfer Co.	Yes, by National Transit Co. (entire property)	No	Property—1874	Original Pipe Line about 8 miles long within State of Pennsylvania purchased 1874 16:3175
	Western & Atlantic Pipe Line Co.	Yes, by Trustees or National Transit Co., 45% of stock.	No	45 per cent. of stock acquired early 1890.	Balance of stock never acquired. Company liquidated 1894. Gathering line entirely in State of Pennsylvania, owned by Globe Refining Co. of Pittsburg, with whose refinery it was bought in 1890. 19:648
	Smith's Ferry Oil Transportation Co.	Yes, by National Transit Co. (entire stock)	No	Acquired—1878	Small gathering Pipe Line running to refinery of Paine Ablett & Co. by whom it was owned and with whose refinery it was bought; entirely within the State of Pennsylvania. (13:3962)
Crescent Pipe Line Co.		No	No	Entire stock purchased 1895 for cash.	Trunk Pipe Line entirely within State of Pennsylvania. 19:640

TABLE SHOWING STATUS ON JULY 2, 1890, OF ALL NOW EXISTING APPELLANT COMPANIES; ALSO STATUS ON SAME DATE OF PROPERTIES HELD BY ANY OF SAID APPELLANT COMPANIES ON NOVEMBER 15TH, 1906, AND WHICH PROPERTIES WERE DERIVED FROM INDEPENDENT CONCERNS.

PIPE LINE COMPANIES—(*Continued*).

Name of Appellant Company.	Holds properties derived primarily from following Concerns, since liquidated.	Owned July 2, 1890 and how?	Organized by Standard Oil Interests. (Yes or No)	If acquired, date of acquisition of stock or property.	Remarks.
Buckeye Pipe Line Co.		Yes, by National Transit Co. (entire stock)	Yes—1886	No	Owns Pipe Lines in State of Ohio, constructed and paid for entirely by Standard Oil interests. 19:640
Cumberland Pipe Line Co.		No	Yes—1901	No	Owns Pipe Lines in Kentucky constructed and paid for entirely by Standard Oil Interests. 19:640
The Eureka Pipe Line Co.		Yes, by Trustees (entire stock)	Yes — early in 1890.	No.	Pipe lines in West Virginia constructed and paid for entirely by Standard Oil interests. 19 : 640.
Indiana Pipe Line Co.		No.	Yes—1891 by National Transit Co.	No.	Entire stock taken by National Transit Co. in 1891, and paid for with money and property. 19 : 640.
New York Transit Co.		No.	Yes—1892 by National Transit Co.	No.	Entire stock taken by National Transit Co. in 1892 and paid for with property and money. 19 : 641.
Northern Pipe Line Co.		Yes, by National Transit Co. (entire stock)	Yes—1889 by National Transit Co.	No.	Entire stock paid for by National Transit Co. with money and property. 19 : 641.
Southern Pipe Line Co.		Yes, by National Transit Co. (entire stock)	Yes—1890	No	Owns pipe lines in Southern Pennsylvania constructed by itself, and no others. 19:641
Southwest Pennsylvania Pipe Lines.		Yes, by National Transit Co. (entire stock)	Yes—1885 by National Transit Co.	No	Owns Pipe Lines constructed by itself in Southern Pennsylvania. 19:641
Prairie Oil & Gas Co.		No	Yes, after 1899	No	Produces and purchases crude oil in Mid-Continent Field and transports its own crude oil through private Pipe Line to Griffith, Indiana. 19:639

July 2nd, 1890, by the trustees or by some of the companies whose stocks were held by them, in the same manner as on that date and until about March 21st, 1892. Prior to the last date, a proceeding in the nature of *Quo Warranto* had been brought in the Ohio Supreme Court by the State of Ohio against the Standard Oil Co. of Ohio as a sole defendant (*a*).

The decision made and the judgment entered in the course of this proceeding are fully discussed in Defendants' Brief on the Law. It is sufficient to say here that the judgment required the withdrawal of the stock of the Standard Oil Co. of Ohio from the Trustees.

II. The certificate holders thereupon, at a meeting held March 21, 1892, as provided by the terms of the Trust agreement (*b*), adopted the resolutions set forth in the Petition, (*c*) providing for the determination of the trust agreement and the winding up of the affairs of the Trust by distributing the stocks of the corporations held by the Trustees among the owners of the trust certificates in such a way that each certificate holder should receive the same proportionate interest in the stock of each company as he held of the total amount of trust certificates. This exchange was to be carried out by issuing to each certificate holder (upon the surrender of his certificates) an assignment of legal interest in the stocks of the various companies. These assignments of interest, upon presentation to the proper corporate officers, were to be exchanged for stock.

Following the adoption of these resolutions, some of the companies named in the trust agreement and also of those organized or acquired after the formation of the trust, and for whose continued corporate existence there was no necessity, were dissolved. At the same time, the stocks of a number of companies which had theretofore been held by the trustees were transferred directly to the Standard Oil Co. of New Jersey and have ever since been held by that company.

(*a*) Record, Vol. 22, p. 1–13.
(*b*) Petition, Vol. A, p. 28.
(*c*) Record, Vol. A, p. 38–9.

Among these were included (*a*) the following companies, defendants in this suit:

Chesebrough Mfg. Co.
Continental Oil Co.
Galena Oil Works, Ltd. } Now consolidated as Galena Signal Oil Co.
Signal Oil Works, Ltd. }
Swan & Finch Co.
Vacuum Oil Co.

Similar transfers were made to certain other companies.

These changes left in the hands of the trustees stocks of the following twenty companies, (*b*) all of which are defendants here, though the bill was dismissed as to the Forest Oil Co. and the Northwestern Ohio Natural Gas Co.:

Name of Company.	Where Organized.
Anglo-American Oil Co. (Limited)	England
Atlantic Refining Co	Pennsylvania
Buckeye Pipe Line Co	Ohio
Eureka Pipe Line Co	West Va.
Forest Oil Co	Pennsylvania
Indiana Pipe Line Co	Indiana
National Transit Co	Pennsylvania
New York Transit Co	New York
Northern Pipe Line Co	Pennsylvania
Northwestern Ohio Natural Gas Co	Ohio
Ohio Oil Co	do
Solar Refining Co	do
Southern Pipe Line Co	Pennsylvania
South Penn Oil Co	do
Standard Oil Co. of Indiana	Indiana
Standard Oil Co. of Kentucky	Kentucky
Standard Oil Co. of New Jersey	New Jersey
Standard Oil Co. of New York	New York
Standard Oil Co. of Ohio	Ohio
Union Tank Line Co	New Jersey

(*a*) Pet. Ex. 253, Vol. 7, p. 448, 446.
(*b*) Record, Vol. A, p. 37.

By resolutions of March 31, 1892, certain persons were appointed trustees to liquidate the trusts. These liquidating trustees notified all the certificate holders of the proposed distribution of stock and requested them to surrender their trust certificates to be exchanged for stock of the twenty companies (*a*). Several of the larger holders of certificates at once made the exchange, receiving shares and fractional shares in each of the several companies, bearing in each case the same proportion to the amount of stocks in those companies that the trust certificates previously held by them had borne to the total amount of the trust certificates outstanding. A majority in number of the certificates, which of course represented a majority of the shares of stock in each company, were thus exchanged. Smaller certificate holders showed great reluctance about making the exchange (*b*). This was natural. The unity of the business was universally recognized. Stocks in the separate companies had no market value and were not bought or sold except together as representing an interest in the business as a whole. Trust certificates had a value for sale or as collateral security that the holder felt would not attach to the stocks of the separate companies (*a*). A certain number of stockholders surrendered their certificates and received assignments of legal interest, which they continued to carry instead of converting the same into the stocks of the 20 companies (*c*). Many other trust certificates were retained throughout the entire period by their holders. Only the shares of the twenty companies which were actually exchanged were voted between 1892 and 1899. The outstanding remaining shares held by the liquidating trustees were not voted (*d*).

In this connection the opinion of the learned Court below states (*e*):

> " * * * the receipt by the assignee of his share of the stock of any one of these companies was conditioned by the terms of the assignment upon his accepting his share of the stock of all of them. This method of dis-

---

(*a*) Archbold, Vol. 17, p. 3384.
(*b*) Archbold, Vol. 17, p. 3384–5.
(*c*) Archbold, Vol. 17, p. 3292.
(*d*) Archbold, Vol. 17, p. 3292–4; Rockefeller, Vol. 16, p. 3187–8.
(*e*) Record, Vol. A, p. 575.

> tribution appears to have deterred many of the holders of trust certificates from surrendering them and accepting their shares of the stocks."

We respectfully submit that there is no sufficient warrant for this statement. The only evidence whatever is in the language of the assignment itself (*a*), and that language we submit does not bear the interpretation put upon it by the learned Court. There is nothing in the Record to show that the method of distribution adopted deterred holders of trust certificates from surrendering them and certainly nothing to show that any such result was in the minds of the trustees or of any of the Defendants in formulating the plan of distribution which was adopted, or that by such plan the individual Defendants intended to secure " to themselves the control and management of all the companies (*b*)."

SECOND. THERE WAS NO ACTUAL COMPETITION IN THE LEGAL SENSE BETWEEN ANY OF THE STANDARD OIL COMPANIES FROM 1892 TO 1899.

I. The learned Court below so held (*c*), and it is therefore not necessary to argue the point here.

At all times between the date of the resolutions for the winding up of the trust, and the date of the transfer of the stocks in the other companies to the Standard Oil Co. of New Jersey in 1899, each person who was a certificate holder on March 21, 1892, either directly or through the liquidating trustees continued to own the same proportionate interest in each of the twenty companies (except the Northwestern Ohio Natural Gas Co.) that he had theretofore owned in the total amount of trust certificates and that he held in the Standard Oil Co. of New Jersey after 1899. As to the Northwestern Ohio Natural Gas Co. in which the Trustee held only a majority of the stock, the same statement holds true as to that majority. Mr. Rockefeller testified (*d*) :

> " Before any dissolution of the trust, the people who were the shareholders in the trust owned all these different properties. * * * Those who transferred

---

(*a*) Petition, Vol. A, p. 40.
(*b*) Record, Vol. A, p. 575.
(*c*) Record, Vol. A, p. 580.
(*d*) Record, Vol. 16, p. 3190.

> their interests from the trust into these constituent companies preserved the same relation that they had sustained before in the ownership of these properties. Those who had not yet transferred, those who were from time to time transferring, yet preserved their same proportionate relation in all these properties. * * * The same people, in the same relations, continued."

There was also no possibility of competion because of the continued common ownership of all the companies.

II. In 1897, a bill of information was filed by the Attorney General of Ohio, in the *quo warranto* case, to punish the defendant in that case for alleged contempt in that, as claimed, the Standard Oil Co. of Ohio had not withdrawn from the Trust, (*a*). The testimony given by Mr. Rockefeller in said contempt proceeding and cited by counsel for the Government in this case, is in no way inconsistent with the position that there was no actual competition in the legal sense between the companies from 1892 to 1899. What Mr. Rockefeller meant by that testimony and what the actual facts were is fully explained by him as follows (*b*) :

> " These corporations were being stimulated, each of them, in every way that would produce the minimum of cost in their manufacture, and in every way to do their business the best that could be done.
>
> " * * * As a practical question what would be done, I suppose, would be that the Standard Oil Company of Ohio would supply the trade which it could supply to the best advantage * * * and it would be just the thing that was the natural thing to do in that regard. * * * I suppose that as a matter of fact these companies, all being owned by the same people, would not be managing their separate businesses except in the way that would be the most productive for all the separate businesses."

III. But it is asserted that if there was no actual competition between the Standard Companies during the period in question, then they were doing business in violation of the judgment of the Ohio Court.

(*a*) Record, Vol. 22, p. 32, 513.
(*b*) Record, Vol. 16, p. 3189, 3192-3.

1. The judgment of the Ohio Court was literally observed (*a*). The Standard Oil Co. of Ohio withdrew from the trust. All of its shares were surrendered by the Trustees (*b*). No dividends were paid by it except on the shares which had been regularly issued upon the surrender of trust certificates. The Trustees did not vote the stock of any company held by them nor exercise any control over the Ohio company nor over any other company (*c*).

2. It is contended that all the holders of trust certificates might have been compelled to turn the same in, in exchange for the stock of the various companies by withholding dividends. This very point was raised in the contempt proceedings. Mr. Archbold, in reply to the suggestion, testified (*d*):

> "I say that any such proceeding on the part of the Trustees would have resulted in a panic in the value of the shares of the Trust Stock and in an immense injustice and loss to the great body of shareholders; a few of the large owners might possibly have protected themselves and might have made victims of the small owners, but there could be no other effect than an immense loss. *There was no market value for the shares of the constituent companies*, and a small shareholder would have found himself utterly without a market for his holdings. Many people were borrowers of money with the stock pledged as collateral and would have been utterly at the mercy of any person or persons who might have been in possession, to take advantage of their necessities. Such a thing was a commercial impossibility."

3. But the decisive answer to the whole contention is that the entire subject was threshed out before the Supreme Court of Ohio in the contempt proceeding, very full proofs being taken and every point now raised by the Government having been considered, whereupon on December 11th, 1900, the Court rendered the following decision in favor of the defendant (*e*) (italics ours):

> "This day this cause came on to be heard upon the information against said defendant for contempt here-

---

(*a*) Record, Vol. 22, p. 31-2.
(*b*) Record, Vol. 29, p. 130.
(*c*) Rockefeller, Vol. 16, p. 3187-8.
(*d*) Record, Vol. 22, p. 463.
(*e*) Record, Vol. 22, p. 525.

tofore filed herein, and *the evidence produced by the parties; on consideration whereof, the Court, being fully advised in the premises, does find that said defendant is not guilty;* it is, therefore, considered and adjudged that said information be and it is dismissed and that said defendant recover its costs herein expended."

CHAPTER VIII.

Transfer of stocks to Standard Oil Company of New Jersey.

I. In 1899 the capital stock of the Standard Oil Co. of New Jersey was increased to $110,000,000, the $10,000,000 theretofore outstanding being made preferred stock and being retired shortly afterwards by exchanging it for common stock (*a*). This left an authorized issue of $100,000,000 common stock. By resolution of the Board of Directors, the officers of the New Jersey company were authorized to issue certificates of common stock of that company in purchase of the stock of the remaining nineteen companies at the rate of one share of common stock of the New Jersey company for various fractional shares of the other companies. At the time of the dissolution of the trust, there were outstanding 972,500 shares of trust certificates. Therefore 972,500 shares of the common stock of the New Jersey company were issued in exchange for all the stocks of the other companies and for the $10,000,000 or 100,000 shares preferred stock of the New Jersey Company. For example, as there were 35,000 shares of the capital stock of the Standard Oil Co. of Ohio, one share of the New Jersey common stock was issued for 35,000/972,500ths of a single share of stock of the Standard Oil Co. of Ohio. In like manner for all the companies. The actual transfers of stock are set out in detail in Def. Ex. 388 (*b*). In the case of the small certificate holders who could not readily make the exchange, because to do so would have involved the handling of fractions

(*a*) Pratt, Vol. 1, p. 83-4.
(*b*) Record, Vol. 19, p. 894.

of shares of stock, a method was employed (*a*) whereby through intermediaries the process was carried out. The result of the transaction was that each stockholder of the New Jersey company owned the same proportion of its stock which since 1892 he had held (either directly or indirectly) in the stock of each of the twenty companies and to which proportion of all the stocks at an earlier date he had held an equitable title through the Trustees.

II. At the time of the transfer of the stocks of the nineteen companies to the Standard Oil Co. of New Jersey, such stocks had substantially all been distributed to and were held by their actual beneficial owners. All the shares of each company were then held by the same persons in the same proportions. In each of the companies, a majority of the stock was held and owned by the same small group of individuals and estates. Absolute unity of ownership and control therefore existed as to all the twenty companies and their various subsidiaries.

As already shown and as found by the Circuit Court, there was no actual competition among any of the defendant corporations at the time of the transfer, nor had there been for upwards of twenty years. Since 1879, or since the dates of organization of the respective companies created by Standard interests, the stock of each company had been held in the same uniform way, so that the equitable title thereof was always vested in the same group of persons in the same proportions (*b*). This equitable title, as just stated, had been changed to a legal title prior to the transfer.

Thus the transfer of the stocks of the nineteen companies to the Standard Oil Co. of New Jersey made no change in the property rights of the owners nor in the location of the ultimate control of these companies, nor any change in respect to competition among them. They were all owned and controlled by the same people before as they were afterward and in exactly the same way, except as to the holding of the legal title. There was no competition before the transfer and none after it.

(*a*) Record, Vol. 17, p. 3665.
(*b*) Record, Vol. A, p. 580.

CHAPTER IX.

Analysis of Acquisitions.

This is a convenient point to stop and analyse the entire group of properties acquired by Standard interests from the beginning.

FIRST: OBJECTIONS TO TABLE OF ACQUISITIONS PRESENTED BY COUNSEL FOR GOVERNMENT.

The Government has made up a list of formidable length, purporting to enumerate the concerns acquired by Standard Oil interests since 1870. To this list there are the following serious objections.

1. It utterly ignores the jurisdictional element of interstate commerce.

2. It fails to specify the concerns (nearly three quarters of the whole number) which were purchased entirely for cash.

3. Non-competing concerns. The most glaring instance is the "*Gilbert & Barker Mfg. Co.*" solely engaged in making apparatus for gas manufacture (*a*).

4. Duplications and names improperly added. Examples:

(A) The "*Union Refining Co.*" of Titusville was a combination of three others named (*b*). The table lists all four as separate acquisitions. But, in fact, the combination had been effected by others before the Standard bought the Union (*c*). So that only a single acquisition should be charged.

(B) The two *Globe Refining companies* were owned by the same interests, the stock of the Philadelphia Company being held by the Pittsburg Company. They, together with the Western & Atlantic Pipe Line, which was adjunct to the Pittsburg refinery, formed a single business, having the same owner, and were sold in one transaction for a single price (*d*). They should be counted

---

(*a*) Record, Vol. 19, p. 634.
(*b*) Record, Vol. 17, p. 3352, 3339.
(*c*) Record, Vol. 6, p. 2842–3.
(*d*) Record, Vol. 6, p. 3136.

as only one acquisition. In contrast, see references in the record to the National Refining Co., a competing concern, whose six refineries are reckoned by our opponents as one property (*a*).

(C) "*Smith's Ferry Oil Transportation Co.*" was a small gathering line belonging to Paine, Ablett & Co., whose refinery it supplied and with which it was bought. The transaction was single and should have been so stated (*b*).

(D) Also the list contains several concerns like "*A. M. Burk*," as to which there is no evidence that they were ever acquired by Standard interests. The Tidewater companies were not acquisitions. They were instances of minority ownership without control.

5. The list totally ignores perspective, giving the same space and importance to small pipe lines a few miles long, to insignificant refineries like the Mutual Oil Works at Reno worth less than $1200 (*c*), and to small local marketing outfits with a wagon or two and a single tank, as to Chas. Pratt & Co. and the Warden, Frew & Lockhart properties, valued collectively by Mr. Rockefeller at $3,000,000 (*d*).

SECOND: EXPLANATION OF DEFENDANT'S TABLE OF ACQUISITIONS.

I. In Appendix I, p. 247–263, is printed a table of the Standard's acquisitions from 1870 to 1906. This table is based upon the Government's list above referred to, certain concerns being omitted for reasons above indicated.

1. *Refineries.* The table contains the names of some 125 refineries, mainly of small or ordinary size, owned or controlled by about 116 concerns. Of these some 86 were acquired (primarily or ultimately) entirely for cash; 14 others were acquired largely for cash. Nineteen refineries owned or controlled by 14 concerns were probably acquired wholly or partly for stock of the Standard Oil Co. of Ohio. Several were non-competing when acquired. In the case of 4 refineries, a majority of the stock of an existing com-

---

(*a*) Record, Vol. 17, p. 3436.
(*b*) Record, Vol. 17, p. 3262.
(*c*) Pet. Ex. 272A, Vol. 8, p. 520.
(*d*) Record, Vol. 16, p. 3082.

pany or of a new company organized to take over a purchased business was acquired for cash and the minority is still outstanding. Finally in substanially every case, what was acquired was a refinery, sometimes having other physical property adjunct to it.

2. *Marketing Concerns.* The table lists 58 marketing concerns, large and small. Of these over 50 were bought for cash; at least 42 of them were local concerns, doing business in a single city and its vicinity or at most in a few places within a single state. As to not over 10 can it with certainty be said that they did a business extending beyond a single state, and of these at least 6 were originally or ultimately bought for cash? Omitting those whose business was confined within a single state and those which were bought for cash, there remain only four marketing concerns, to wit:

1878
Waters-Pierce & Co.
Alex. McDonald & Co.
Thompson, Bedford & Co.
1888
West Michigan Oil Co.

All of these properties or the stocks representing them were, from the times of their acquisition, also held in trust, for the group of common owners.

Concerning the local marketing concerns, Mr. Archbold testified (*a*):

> "Prior to that time (1890) the business had been done largely in barrels, which was an expensive and wasteful method. The inauguration of bulk stations, the transportation in bulk cars, and the distribution that came about in bulk wagons, tank wagons, of course worked a radical change in all respects in the doing of the business, and it tended irresistibly toward the elimination of the jobber or small dealer in oil in the various sections of the country. They realized that the change was occurring and that their facilities were rapidly becoming valueless because of the introduction of these better methods, and for that reason they, in numberless cases, desired to treat for such properties as they had,

(*a*) Record, Vol. 17, p. 3467-8.

whether teams, platform, wagons, or whatever, and through that period that was the reason of the many trades that were made with different small dealers throughout the country. It was largely—I should say in the great majority of instances—their own wish that they be dealt with in that way; for the march of progress in the business showed perfectly clearly that their facilities were becoming old fashioned and obsolete."

3. *Pipe Line Concerns.* The insignificant extent of the pipe lines acquired prior to 1880 has already been commented on (*ante*, p. 29, 30). The only lines of any importance afterwards acquired were the Crescent Pipe Line (1895) about 271 miles in length (*a*) and the Mellen Pipe Lines (1895). Both were bought outright for cash (*b*). The Mellen lines were gathering lines, aggregating about 302 miles of pipe, (*c*) extending from West Virginia into Pennsylvania. Except the Mellen lines, *every pipe line in the Defendants' table (b) or in the Government's list of acquisitions was included entirely within the state of Pennsylvania.* Some of them ran only from wells to refineries. Even the Crescent line ran to a refinery at Marcus Hook (*d*) belonging to the owners of the Crescent and carried no crude for any other concern (*e*).

CHAPTER X.

Failure to Show Acts Involving Monopolistic Exclusion.

FIRST: AS TO THE ACQUISITION OF COMPETING PROPERTIES.

I. The record is bare of evidence that the Standard Oil companies have ever driven a competitive refiner or owner of a pipe line or other property out of business or purchased his property through any sort of coercion. Of all those who within the last forty years have sold refineries or other properties to the Standard Oil companies, only two individuals,

---

(*a*) Record, Vol. 17, p. 3325.
(*b*) Appendix I, p. 269.
(*c*) Record, Vol. 17, p. 3466.
(*d*) Record, Vol. 17, p. 3325.
(*e*) Record, Vol. 17, p. 3328; Vol. 1, p. 379.

Emery and Castle, could be procured by the Government to testify that their sales to the Standard Oil companies were otherwise than fair transactions, and neither of them named as causes of his sale any facts for which the Standard was responsible (*a*).

II. *The record does not show a single instance where the Standard companies took from the vendors of refineries or other properties contracts restraining them from re-entering the business.* Only two attempts were made to furnish such proof and in neither of these does the testimony show a contract (*b*).

III. *No refineries were purchased with a view to limiting the output.* The "purpose in buying the little refineries was to succeed to their volume of business" (*c*).

1. The chief refineries purchased have been operated ever since and have grown into some of the great plants of to-day; some were continued in operation for many years as separate refineries and were finally abandoned owing to changed conditions of trade; some were destroyed by fire (*d*); others were moved bodily and consolidated with existing plants (*e*). In the instances where small refineries were disused, their equipment was utilized as far as practicable in other construction (*f*). This is what the Government calls "dismantling." No instance was shown where such dismantling was followed by any diminution of business.

2. On the contrary, the whole history of the Standard Oil interests, from the beginning, shows a steady and extraordinarily rapid increase in the volume of the business done, which rose from about 421,000 barrels (*g*) of crude in 1870 to about 16,592,953 barrels in 1882 and to 64,958,301 barrels in 1906.

SECOND: RELATIONS WITH TIDE-WATER COMPANIES.

I. As to these companies, the Court below expressly adjudges that they "have not been proved to be engaged

---

(*a*) Emery, Vol. 6, p. 2639, 2642–4; Castle, Vol. 6, p. 3038–9.
(*b*) Irwin, Vol. 6, p. 3014; Cram, Vol. 5, p. 2424–5.
(*c*) Archbold, Vol. 17, p. 3324.
(*d*) Archbold, Vol. 17, p. 3260.
(*e*) Archbold Vol. 17, p. 3337.
(*f*) Archbold, Vol. 17, p. 3324, 3336.
(*g*) Record, Vol. 6, p. 3269; Vol. 19, p. 624.

in the operation or carrying out of the combination," and the bill is dismissed as to them.

This adjudication finally disposes of the charge so persistently made by the Government that the Tidewater Companies have been "controlled" by the Standard, and nullifies all the Government statistics which purport to combine in one set of tables the production, the amount of crude transported or the output of refined oil, of the Tidewater with the same items of the Standard's business.

Defendants might rest upon this judgment; but, so much has been said regarding these companies, that a short explanation may assist the Court. The Tidewater Pipe Co. (Ltd.) constructed one of the earliest trunk pipe lines towards the seaboard, in the building of which the company met with various obstacles, with none of which have any of the Standard companies or the individuals associated with them been connected. And this is not disputed by the Government. In any event, in 1886 the line was carried through to the seaboard at Constable Hook, substantially as planned (*a*). The record is encumbered with testimony relating to a controversy between the stockholders of the Tidewater Company, in January, 1883, over the control of the company (*b*). There is no evidence connecting Standard Oil interests with this controversy. The Government's assertion in that regard rests upon the fact that nearly a year later some of the unsuccessful parties to the controversy sold their stock to the Standard (*c*). This stock was bought by the Standard Oil Co. in December, 1883, in connection with the purchase of producing properties (*d*). The Standard has never owned over 31 per cent. of the total stock of the company.

II. About October, 1883, and some time before the Standard Oil trustees acquired any stock in the Tidewater Pipe Co., contracts substantially like those annexed to the petition as Exhibit 13 (*e*), were entered into between certain Standard Oil companies and the Tidewater Companies (*f*). The contracts were

---

(*a*) Record, Vol. 1, p. 190–4.
(*b*) Record, Vol. 1, p. 195–207; Vol. 7, p. 78–9, 105.
(*c*) Record, Vol. 1, p. 207–8; Vol. 17, p. 3320.
(*d*) Record, Vol. 17, p. 3320.
(*e*) Petition, Vol. A, p. 152, 154.
(*f*) Record, Vol. 1, p. 211–12, 215.

duly terminated in 1890 as of January 1st of that year (*a*). In the same year, 1890, a contract was made between the National Transit Co. and the Tidewater Pipe Co (*b*). providing for the delivery by the former to the latter of a certain quantity of crude oil, which contract by renewals is still in force, but as to which no possible exception can be taken (*c*). The contracts cancelled in 1890 provided in part that the Tidewater Pipe Co. (Ltd.) should be entitled to do 11½ per cent. and the Standard 88½ per cent. of the aggregate business done by all the parties to the contract. If either did more than its stipulated proportion, the other should receive certain payments out of the profits on the excess business (*d*). On this account, it has been claimed that the contracts of 1883 tended to restrict the development of the Tidewater Companies and that this was the purpose of the contracts. If so, the restrictions ceased and the purpose was abandoned in 1890. In fact, the contracts did not restrict those companies. The proportion of business allotted to them was all they could take care of. Benson testified that, since 1883, the Tidewater Companies had received from the Standard Oil companies and from their own gathering lines an amount equal to the capacity of their pipe lines and of their refinery; that in recent years they have not had capacity to do anywhere near 11½ per cent. of the total business and that their works are run to their full capacity now (*e*). No witness testified to any unfair treatment of the Tidewater Companies by the Standard interests. The contracts contained no limitation as to prices, markets or localities.

III. The Tidewater Oil Co. sells 95 per cent. of its refined oil for export, of which 77 per cent. is sold on consignment through the Standard Oil Co. and 23 per cent. direct "to anybody that would buy it". Of the 5 per cent. of the total refined sold by the Tidewater in the domestic market, nearly all is sold on commission through the Standard as consignee (*f*). Benson's explanation of this method of marketing is perfectly reasonable. He says that about 50 per cent. of the refined oil

---

(*a*) Pet. Ex. 39, Vol. 7, p. 108.
(*b*) Pet. Ex. 38, Vol. 7, p. 107.
(*c*) Record, Vol. 1, p. 216.
(*d*) Petition, Vol. A, p. 155.
(*e*) Record, Vol. 1, p. 217.
(*f*) Record, Vol. 1, p. 218-220.

produced by the Tidewater refineries is too low in fire test to meet the laws of the States and must be exported. *The balance of the refined, they sell abroad because the price obtainable there is better.* Benson's explanation of why his company employs the Standard to market its export oil, instead of personally handling the business, throws great light on the whole export proposition. He says (*a*):

> "The reason (*i. e.* why they sell their export oil through the Standard Oil Company) is that all of the bulk oil that is exported (and this low grade oil goes in bulk shipments) is carried in oil ships and handled on the other side in tank cars and tank wagons in bulk, which means an enormous outlay of capital, and we did not feel we could afford to go into that outlay of capital, provided we could make an arrangement which was fairly satisfactory to us with somebody else to handle it for us."

THIRD: CHARGES RELATING TO PURE OIL COMPANY INTERESTS

I. *United States Pipe Line.* Much testimony is given in the record in regard to opposition said to have been offered to the building of the United States Pipe Line, which is largely owned by the Pure Oil Co., but there is no competent evidence that the Standard interests were in any way responsible for this opposition (*b*). It is true that Mr. Emery stated (*c*) that the first opposition came from Standard Oil Co. agents, whom he says "took rights away on top of our rights-of-way"; but, on cross-examination, he was entirely unable to name a single individual who did what he charged or offered any opposition other than two (one a field man and one a lawyer) as to whom he testified (*d*):

> "Q. Did either of those two men buy any strips of land? A. I don't know that they did; they were simply on the ground."

He also named Mr. Daniel O'Day, but says (*e*) that the latter was in his room at 26 Broadway all the time. He also declares

---

(*a*) Record, Vol. 1, p. 229.
(*b*) Record, Vol. 1, p. 467–8.
(*c*) Emery, Vol. 6, p. 2652.
(*d*) Emery, Vol. 6, p. 2777.
(*e*) Emery, Vol. 6, p. 2778.

that briefs in some of the suits brought by railroads to prevent the construction of the pipe lines were drawn by Mr. Elliott, then and now of counsel for the Standard Oil Co. (*a*). This statement upon its face is pure hearsay and would in any event be insufficient to show any connection of the Standard with the matter.

There is ample reason why the railroads should be inclined to prevent the construction of a pipe line to seaboard by the United States Pipe Line Co. *That company has always transported refined oil in its pipe line, whereas all other refiners, including the Standard, have always shipped their refined oil by cars.* Thus the United States project directly threatened valuable business of the railroads.

The United States Pipe Line reached tidewater at Marcus Hook, near Philadelphia, in 1902 (*b*), since which time the line has been in active operation supplying principally the refineries of the Pure Oil Co. and its associated refiners (*c*) Meanwhile the Pure Oil Co. has grown to be a great concern with a capital of $10,000,000, owning the stocks and property of subsidiary companies (*d*).

II. *Alleged price manipulation in 1892–5.*

Several witnesses charge in substantially the same way, that, in the period from 1892 to 1895, the Standard Oil Co. arbitrarily first depressed and then raised the price of Pennsylvania crude, and the price of refined oil for export—to destroy the business of the independent refiners and dealers then or later associated with the Pure Oil Co. None of the witnesses pretended to have actual knowledge of any act on the part of the Standard or its agents tending to produce this result. The whole charge rests upon fluctuations in prices, from which the witnesses infer the Standard's agency. In fact, these price changes were due to purely natural and economic causes, as appears from official statistics contained in the Government's exhibits.

(*a*) Emery, Vol. 6, p. 2655.
(*b*) Tarbell, Vol. 3, p. 1435.
(*c*) Tarbell, Vol. 3, p. 1449.
(*d*) Tarbell, Vol. 3, p. 1430-9.

1. The following table tells the story, so far as crude prices are concerned:

Year.	Average price Penna. crude inbbls. of 42 gals.	Average price Penna. crude in cents per gal.	Total Production Penna. crude in bbls.	Stocks Penna. crude in S. O. Co. pipe lines.
1890	$ .87	2.07 cts.	30,073,307	7,998,516
1891	.67	1.59	35,848,777	13,754,376
1892	.56	1.33	33,432,377	15,474,650
1893	.64	1.52	31,365,890	10,282,513
1894	.84	2.	30,783,424	5,216,645
1895	1.36	3.24	30,960,639	4,333,248
1896	1.19	2.83	33,971,902	8,692,983

(Pet. Ex. 977, 21: 136; Pet. Ex. 938, 21: 132.)

The Pure Oil refiners used Pennsylvania crude. The price of this crude in 1890 was 87 cents per bbl. or 2.07 cents per gallon. In that year, the total production was about 30,000,000 bbls. and the stocks on hand were about 8,000,000 bbls. In the two years following, the production rose to 35,000,000 bbls. and the stocks on hand to 15,000,000 bbls., while the prices declined to 67 cents and 56 cents per bbl., respectively. Tarbell, a chief officer of the Pure Oil Co., admits (*a*) that these low prices were largely due to overproduction.

In 1894 and 1895, the production fell off to about 30,000,000 bbls. per year and stocks declined to 5,000,000, and 4,000,000 bbls. respectively. As a natural consequence of this decrease of supply and of drawing on the accumulated stocks, the price of crude rose to an average price of 84 cents in 1894 and to an average of $1.36 in 1895. Tarbell admits (*b*) that a large decrease in the stocks of crude oil would cause the price to rise, and says (*c*), referring to the stocks (italics ours):

> "There is no question but what they were decreasing, *as would be indicated by the abnormal prices in 1895*, when, of course, everyone connected with the oil

(*a*) Record, Vol. 1, p. 470.
(*b*) Record, Vol. 3, p. 1456.
(*c*) Record, Vol. 3, p. 1457.

business knows that they were short of stock."

When Lee says that the price went to $2.70 per bbl. in the month of April, 1895 (*a*), he is describing a period of wild speculation, such as would be apt to attend a sudden shortage. Indeed, he says (*a*):

> "The Oil Exchange got away with all fixed prices from January of that year up to April. The market ran wild. * * * Outsiders bought it too; everybody was buying oil during that excitement."

2. If the Standard arbitrarily raised crude prices, it did so to its own great cost. According to Lee, the Standard, in 1895, handled 90 per cent. of the business, or say, 27,000,000 barrels of Pennsylvania crude (*b*), from which should be deducted, as the Standard's own production of that crude, say 7,000,000 barrels (*c*). The increase in the cost of 20,000,000 barrels over 1893 at an advance of 72 cents per barrel *(ante*, p. 80) would amount to $14,400,000. for the year 1895 alone. The total business of the Pure Oil refiners in 1895 was less than 750,000 barrels (*d*), amounting at $1.36 per barrel to about $1,000,000. gross receipts.

Is it reasonable to suppose that any merchant would willingly incur such a loss to injure so small a rival?

It is interesting to note that the price of Lima crude, during the same period, rose from 37 cents per barrel in 1892 to 70 cents per barrel in 1895, showing a general upward trend in crude prices. The price of Pennsylvania crude never again returned to the low figures of 1891–1893 and, with the exception of two years, it has never fallen below $1.19 a barrel. In 1907, the price was $1.75 per barrel (*e*).

3. The changes in export prices in 1892–1895 are readily explainable on economic grounds. Export prices of refined oil are necessarily regulated in large part by the amount thereof offered for export and by the amount of crude produced by other countries than the United States. It appears that, from 1892 to 1894, the total foreign production of crude

---

(*a*) Record, Vol. 6, p. 3192.
(*b*) Record, Vol. 6, p. 3173.
(*c*) Def. Ex. 266, Vol. 19, p. 626; Def. Ex. 1043, Vol. 21, p. 224.
(*d*) Record, Vol. 3, p. 1464.
(*e*) Pet. Ex. 977, Vol. 21, p. 136.

was only slightly less than the total production in the United States. Here, then, was a constant factor to be reckoned with (*a*). On the other hand, the increase in refined oil exports from the United States from 1892 to 1894 amounted to 140,950,441 gallons. The reason is not far to seek. The Court will take judicial notice that the great panic occurred in 1893 and was followed, both in this country and in Europe, by two years of great business depression, when reduced incomes made necessary the strictest economy, thus bringing about, in this country at least, decreased consumption of every commodity, including oil. With the conditions as just summarized, a decline in export prices in 1893 and 1894 was inevitable. In 1895, with improved business conditions (and presumably increased demand) both in this country and in Europe, the amount offered for export fell off and the export price rose, being no doubt accentuated by the great advance in the price of crude oil in that year. The following table shows the situation :

Year.	Total exports refined oil in gallons.	Net export refined prices in cents per gallon.
1892	589,418,185	3.57 cts.
1893	642,239,816	2.74 cts.
1894	730,368,626	2.69 cts.
1895	714,859,144	4.86 cts.

(Archbold, 17:3414; Def. Ex. 276, 19:660; Johnson, 17:3582.)

Extreme prices quoted by witnesses for export oil in 1894–5 do not agree with the exhibits (*b*). The argument of improbability based upon the loss to the Standard again applies to the changes in export prices.

III. In connection with the charges of manipulation of prices just considered, the same witnesses charge the Standard Oil Co. with buying out Philip Poth, of Manheim, Germany, who had been for a short time the agent of the Pure Oil

(*a*) Pet. Ex. 977, Vol. 21, p. 136; Pet. Ex. 1044, Vol. 21, p. 225.
(*b*) Record, Vol. 17, p. 3582; Vol. 6, p. 3189.

refiners for export. The facts about this transaction were fully stated by Mr. Archbold. It appears that Mr. Poth had been the chief customer of the Deutsche-Amerikanische Petroleum Gesellschaft, representing the Standard Oil Co. in Germany and being its marketing agent there; that the Pure Oil Co., in 1894, induced Poth to leave this German company and to take over the business of the Pure Oil Co., and that, in 1895, Poth made overtures to the German company for a re-establishment of his relations with them, which resulted in an arrangement making him again the customer of the Standard's representative. The utmost that can be said as to this is that, after the Pure Oil Co. took Poth away from the Standard, the Standard got him back again (*a*).

FOURTH: AGREEMENT WITH REFINING COMPANIES in 1903.

This agreement is printed as Exhibit 15, attached to Petition, (*b*). The refineries concerned, which are listed in the Petition (*c*), had been buying Pennsylvania crude from the Standard Oil Co. for a period of years. Prior to 1903, the total production of that crude had been rapidly decreasing, having declined from 36,295,433 barrels in 1900 to 31,558,248 barrels in 1903, or about one-seventh (*d*). The refiners in this group bought in 1896 only 302,000 barrels, but their demands increased up to 1,750,000 barrels in 1903 (*e*). In that year, they were notified that all of their increasing orders could not be filled and the meeting followed in which the agreement in question was made (*f*). By its terms, the Standard agreed to sell a quantity of crude, apparently 150,000 barrels per month, which these refiners were to divide among themselves as they saw fit (*g*). In fact, for the three years ending December 31st, 1906, the Standard sold to this group of refiners some 4,500 barrels per day or say 1,642,500 barrels per year (*h*). In the first six months of 1907, the Standard delivered to the same group of refiners 1,074,000 barrels. In the meantime the total production of Pennsylvania crude fell from 31,558,248 barrels in 1903 to 25,342,137 barrels in 1907 (*i*). Yet, in spite of

---

(*a*) Archbold, Vol. 17, p. 3629–30.
(*b*) Record, Vol. A, p. 165.
(*c*) Record, Vol. A, p. 54.
(*d*) Pet. Ex. 977; Vol. 21, p. 136.
(*e*) Record, Vol. 1, p. 174.
(*f*) Record, Vol. 1, p. 175.
(*g*) Record, Vol. 1, p. 140–41.
(*h*) Record, Vol. 1, p. 176.
(*i*) Pet. Ex. 977; Vol. 21, p. 136.

this decrease in the supply, the Standard kept up its full deliveries to these refiners and even increased them (*a*).

The refiners on their part agreed to sell the Standard Oil Co. all the refined oil which they wished to export, at the regular market price, less one quarter cent commission to the Standard. In view of the heavy obligations as to crude undertaken by the Standard under this contract, this provision as to export oil was a very slight return. As a matter of fact, its results have been insignificant. The refiners sold the Standard, in the same three years 1903–1906, an average of only 427 barrels of refined oil per day; and, in the first six months of 1907, only 13,000 barrels in all or about 72 barrels per day (*b*). It is difficult to see any cause for criticism in this transaction.

FIFTH: AGREEMENTS OF 1884 BETWEEN NATIONAL TRANSIT COMPANY AND PENNSYLVANIA RAILROAD COMPANY (*c*).

These contracts were suspended as of January 1, 1893 (*d*) and have never since been in operation (*e*). They were formally cancelled in 1905 (*id.*). They were made at or about the time of the completion to seaboard of the National Transit trunk line through Pennsylvania; ever since which, crude oil for seaboard refineries has largely been transported in pipe lines; whereas refined oil, to this day, is still transported in tank cars, except by the United States Pipe Line. The Pennsylvania Railroad had a valuable traffic both in crude oil, delivered directly to it by the gathering lines, and in refined oil from interior refineries, both of which it transported in tank cars. It had great reason to fear that the completion of the trunk line to seaboard would not only take away its crude oil traffic, but by transferring the refining industry to seaboard, would cut heavily into its refined oil traffic. On the other hand, the railroad had the power, by lowering its crude rate relatively to the rate on its refined, to put the interior refineries including

---

(*a*) Record, Vol. 6, p. 3224.
(*b*) Record, Vol. 1, p. 176, 178.
(*c*) Exhibit 14, Petition, Vol. A, p. 160.
(*d*) Record, Vol. 8, p. 1499–1500.
(*e*) Archbold, Vol. 17, p. 3442.

those of the Standard at a disadvantage as to the export trade in comparison with seaboard refineries. The situation was one that naturally led to an understanding between the parties. The Pennsylvania was ready to agree not to disturb existing conditions, if the operation of the pipe line left it a substantial part of the oil traffic. The National Transit Co., with the co-operation of the Standard Oil refineries, was in a position to give the Pennsylvania the assurances it required, without incurring any onerous obligation (*a*).

In the contracts of 1884, the National Transit Co. agreed that all shippers desiring oil delivered directly to the Pennsylvania through the local pipe lines should enjoy the use of those lines without favor or discrimination; and it guaranteed that the Pennsylvania's total volume of business in oil, *refined and crude*, should be at least 26 per cent. of the total. In other words, it undertook that neither by the diversion of crude oil from the local shipping points nor by the transfer of the Standard's refining business to the seaboard would the Pennsylvania's total traffic be cut below 26 per cent. The Pennsylvania Road on its part agreed to observe the established relation between freight on crude oil and freight on refined. By the supplemental contract, it was agreed that the Transit Company, in lieu of actually delivering the oil, if any, necessary to make up the Pennsylvania's quota, should carry that oil through to seaboard, at a certain rate, accounting to the railroad for the excess part of the regular rate.

It does not appear that any crude oil ever had to be or was delivered or that any payments were made to the Pennsylvania Railroad under this contract. Such contracts between carriers were common prior to the passage of the Sherman Act and in many instances remained in force for two or three years after the passage of that Act and until the public appreciated the real meaning of the Act. These contracts would seem to be entirely irrelevant as evidence against the defendants in this case (*a*).

(a) Archbold, Vol. 17, p. 3445.

SIXTH : FLORENCE OIL & REFINING COMPANY AND UNITED OIL COMPANY.

It is charged in the Petition that these companies are in combination and conspiracy with the Standard Oil defendants. All the Government proved in this behalf, however, is that the Continental Oil Co. has for a number of years marketed all the refined oil of the United and Florence Companies, but that there is no contract with these companies for the purchase of their oil (*a*). The decree of the Court below (*b*) enumerates these companies among those which "*have not been proved to be engaged in the operation or carrying out of the combination*". The Defendants rest upon this judgment.

SEVENTH : ALLEGED CONTRACTS IN RESTRAINT OF TRADE.

I. In 1887 the Standard Oil Co. of New York joined for a short time in the attempt which was made by Pennsylvania producers to limit the production of crude oil in that field. The plan proved futile and was soon abandoned. The only purpose of the Standard was to assist the producers, who were getting very low prices for their crude on account of over-production. The Standard's attitude throughout the whole transaction, instead of being subject to criticism, was extremely generous and helpful to all the producers (*c*).

II. The contracts made by the Standard Oil Co. of Iowa and by the Pacific Coast Oil Co. with various California oil companies had no possible relation to interstate trade or commerce. The Union, Puente, Pinal and all the other companies mentioned in the petition or in the testimony as those with which contracts were made were all California companies and there is not a word of evidence to show that any of them did business outside of that state. Moreover, no intention to suppress competition can be inferred from any of the contracts.

1. The contract with the *Puente Oil Co.* dated March 31, 1898, bound the Standard Oil Co. of Iowa to take all the water white refined oil made by the Puente up to an amount not exceeding 600,000 gallons per year and all its 67° naphtha up to an amount not exceeding 360,000 gallons per year; also a

---

(*a*) Record, Vol. 2, p. 729–30.
(*b*) Record, Vol. A, p. 526.
(*c*) Record, Vol. A, p. 167; Archbold, Vol. 17, p. 3247.

certain amount of 58° naphtha. The Puente on its part simply agreed not to deal in any of the products mentioned except "those of its own manufacture at the refinery aforesaid (*a*)." This provision was inserted to protect the Standard's trade. It simply amounted to saying that the Puente Oil Co. should not enter into competition with the Standard while it was selling all of its products to the latter. There would seem to be no possible objection to such a contract. In any event there is no proof that the contract continued after 1900 or that it was ever renewed (*b*).

2. Alleged contract with *Union Oil Co.* As to the alleged copy of a contract with this company offered in evidence by the Government over objection, there is nothing to show that a single provision of it corresponds to the original and it seems idle therefore to discuss it (*c*).

3. Contracts with *Pinal Oil Co.* and other producing companies. The contract with the Pinal Oil Co. provided for the purchase of 1,000,000 barrels of crude oil from a specified piece of ground at a rate not exceeding 35,000 barrels in any month. Any excess of production up to the total amount of the contract, if not taken by the Pacific Coast Oil Co., was to be stored during the life of the agreement. There were similar provisions in contracts with other companies. These provisions were very reasonably explained by Mr. H. M. Tilford. They were intended to secure fulfillment of the contract. There is no way to tell in advance how much oil there is in a particular piece of ground. If the oil company were permitted to bring oil to the surface without limitation as to quantity and to sell the excess to others, it would probably happen that its supply would be exhausted before the contract was fulfilled. There was nothing to prevent the oil companies from selling to others *after they had either delivered or stored the full amount called for by the contract with the Pacific Coast Oil Co.* Nothing could be more reasonable than this arrangement (*d*).

The present production of crude oil in California is from 135,000 to 140,000 barrels per day, of which one-half is refinable. Of the refinable crude, the Standard Oil Co. of California (formerly Pacific Coast Oil Co.) takes about 25,000 barrels

---

(*a*) Record, Vol. A, p. 170.
(*b*) Tilford, Vol. 2, p. 735.
(*c*) Pet. Ex. 944, Vol. 21, p. 101; Tilford, Vol. 17, p. 3510, 3516-7.
(*d*) Tilford, Vol. 17, p. 3525-6.

per day. It is obvious that the restrictions complained of could have no effect in preventing other refineries from obtaining crude oil (*a*).

CHAPTER XI.

Reasons for the remarkable success of the Standard Oil business.

The success of the Standard Oil business, broadly considered, is due to extraordinary foresight, energy and boldness and to a policy of investment on an immense scale, displayed and carried out in every branch of the petroleum industry. This industry may be analyzed under four great heads: (1) ensuring a constant and adequate supply of crude oil; (2) getting the crude oil to the refineries; (3) maintaining extensive, up-to-date, well situated refineries and employing the latest and most economical refining methods; and (4) developing and extending markets domestic and foreign by improved marketing methods.

FIRST: MEANS FOR ENSURING A CONSTANT AND ADEQUATE SUPPLY OF CRUDE OIL.

I. From the beginning, the Standard interests have been liberal buyers, offering high prices for practically unlimited quantities of crude and paying cash unless the seller preferred otherwise. The method by which these purchases are and have been made is fully described in the Chapter on Pipe Lines (*post*, pp. 111) (*b*).

II. The amount of the Standard's purchases has not been limited by its immediate needs, but only by the utmost capacity of its pipe lines and storage facilities.

1. *Over-production of crude.* In the early days of every oil field, there has been great over-production due to the peculiar conditions of oil mining. Crude oil deposits may be compared to subterranean lakes. The wells are like a vast number of pipes reaching the same lake. As a

---

(*a*) Tilford, Vol. 17, p. 3518.
(*b*) Archbold, Vol. 17, p. 3235; Payne, Vol. 1, p. 379–80.

rule, a single owner holds only a small tract of land surrounded by the lands of other producers. For every well drilled by any one of his neighbors, he must drill another, so that he may get his fair share of the common supply. If he delays, others exhaust the lake. Hence ensues a pell-mell eagerness to sink wells and get the crude to the surface, without regard to present demands and with the certain result of excessive production (*a*). This is strikingly illustrated by the conditions existing to-day in the Kansas-Oklahoma field, where the production has reached 170,000 barrels per day, (*b*) an amount far in excess of present refining demands; so that great quantities of it are being sold at any price (*c*). The same was true of the Lima fields in its early days, where the oil was sold for 15 cents a barrel and used for fuel (*d*).

2. *Exhaustion of oil fields.* Extravagant production has naturally led to early exhaustion of oil fields. The States of Pennsylvania and New York, which in 1882 produced about 30,000,000 barrels, fell off by 1888 to about 16,000,000 barrels; rising again, by the discovery of new deposits, to 33,000,000 barrels in 1891, and again falling to 11,000,000 barrels in 1905 (*e*). The 136,000 oil wells in the Pennsylvania field produce to-day less than half a barrel per day each on the average (*f*). The Lima-Indiana production declined from a maximum of 23,000,000 barrels in 1896 to 16,000,000 barrels in 1905, and has since gone still lower (*e*).

3. *Storage of crude surplus.* Overproduction followed by exhaustion could only result in enormous waste at one period (*g*), and in extreme shortage in another. To save the oil for producers and at the same time to secure a uniform supply for their own refineries, the Standard interests early began to store crude oil during the fat years, to an extent measured only by the utmost limit of their available capital. (*ante*, p. 32) (*g*). These stores were heavily drawn on during the lean years. The following figures showing the fluctuation in the Standard's stores of Pennsyl-

---

(*a*) Archbold, Vol. 17, p. 3249; Litchfield, Vol. 16, p. 2663, 2665.
(*b*) Archbold, Vol. 17, p. 3251.
(*c*) Litchfield, Vol. 16, p. 2661.
(*d*) Barnes, Vol. 16, p. 2718-19.
(*e*) Def. Ex. 265; Vol. 19, p. 624.
(*f*) Emery, Vol. 6, p. 2744.
(*g*) Rockefeller, Vol. 16, p. 3095.

vania or Appalachian crude are typical (*a*).

	Barrels.		Barrels.
1875	*4,000,000	1895	4,333,248
1886	31,975,883	1899	12,669,741
1890	7,998,516	1902	4,887,695
1892	15,474,050	1907	2,155,905

* Emery says total storage capacity not over 4,000,000 bbls. (*b*).

In 1896, the Standard's stock of Lima-Indiana oil in storage was 23,302,770 barrels ; in 1907, it was 3,401,274 barrels.

How necessary this policy of storage has been is shown by the fact that the total present annual production in the States of New York and Pennsylvania, about 11,000,000 barrels (*c*), even if all available, would be inadequate for one year's consumption of the Bayonne refinery alone (*d*). In fact, independent refineries take a large part of this greatly reduced production from a waning field (*e*).

4. *Cost of Storage.* The cost incurred by this policy of storage has been enormous. Tanks cost 25c per barrel of capacity and are rarely filled more than once, because the tank is not usually emptied until the field declines, and then there is no further need for storage capacity in that place (*f*). The oil in storage loses its most valuable ingredients by evaporation and the total loss in that way may reach 10 per cent. of the volume of oil. The oil may be stored for many (in the case of Lima oil it was stored for 10 to 15) years before being used. The tanks have to be kept in repair and the danger of loss by fire is great (*g*). Obviously, to the original cost of the oil, of the tank, and of the land on which the tank stands, must be added interest during the whole period of storage. These elements together make the ultimate cost of stored oil easily average over $1.00 per barrel, and, in the case of the Pennsylvania oil, where the price has been much of the time over a dollar, the average ultimate cost per barrel would be much more. Nevertheless, the Prairie Oil and Gas Company has at the present time in

(*a*) Pet. Ex. 958 ; Vol. 21, p. 132.
(*b*) Record, Vol. 6, p. 2740.
(*c*) Def. Ex. 265, Vol. 19, p. 624.
(*d*) Def. Ex. 269, Vol. 19, p. 627.
(*e*) Record, Vol. 1, p. 217–18 ; Pet. Ex. 371 ; Vol. 8, p. 899.
(*f*) Record, Vol. 16, p. 2654.
(*g*) Record, Vol. 16, p. 2642–3, 2646, 2654 ; Archbold, Vol. 17, p. 3239–40.

storage over 40,000,000 barrels of crude (*a*) ; the Standard Oil Co. of California in 1907 had nearly 13,000,000 barrels (*b*) ; and Mr. Archbold estimated the total amount held in storage by all the Standard companies, in 1908, to be 85,000,000 barrels (*c*). It is not an unreasonable estimate to assume that this vast quantity of oil, by the time it is used, will have cost in all upwards of $100,000,000.

III. The Standard has been at great pains and expense from time to time to develop processes for successfully refining refractory crude oils, which by reason of their chemical composition could not be refined by ordinary methods. Of this, there have been two striking examples :

1. Lima crude oil, when first discovered in 1886, except as to a small part along the Northern border of the field near Toledo, was not refinable by any processes then known, on account of the excessive proportion of sulphur contained in it (*d*). It was used only for fuel and sold as low as 15c. per barrel (*e*). In June, 1889, one of the Standard refineries at Cleveland was set aside as an experimental plant, for the purpose of developing a process for removing the sulphur from the Lima oil (*f*). After an expenditure of several hundred thousand dollars (*g*), a successful and economical process was discovered and perfected by Mr. Frasch (*h*). The Frasch process is the only one by which a good illuminating oil has ever been produced from Lima or Indiana crude, except as to the small portion of the crude mined in the neighborhood of Toledo (*i*). The process was fully patented and has never been used by other than Standard refineries. Its discovery made accessible for use in Standard refineries immense stores of crude oil which for many years were useless to the ordinary refiner.

2. The ordinary California crude is still more difficult to refine. Prior to about 1902, there was practically no good illuminating oil produced in California, except by mixing with it a large percentage of Eastern oil. Eric A. Stark was a chemist employed by the Pacific Coast Oil Co. After the

---

(*a*) Record, Vol. 16, p. 2659.
(*b*) Record, Vol. 17, p. 3496.
(*c*) Record, Vol. 17, p. 3239.
(*d*) Record, Vol. 16, p. 2632–4 ; 2636–7.
(*e*) Record, Vol. 16, p. 2643.
(*f*) Record, Vol. 16, p. 2633.
(*g*) Record, Vol. 16, p. 2636.
(*h*) Record, Vol. 16, p. 2633–5.
(*i*) Record, Vol. 16, p. 2636, 2640–1.

stock of that company was bought by the Standard, Mr. Starke experimented extensively with the California crude and succeeded in producing from it a good illuminating oil (*a*). The process invented by Mr. Starke is fully covered by patents owned by the Standard Oil Co. of California. By use of the Starke process, that Company has increased the quantity run through its refinery from about 260 barrels per day to from 28,000 to 30,000 barrels per day, sells a large product on the Pacific Coast, and furnishes for shipment to the Orient over 1,000,000 barrels of refined oil per year (*b*). Both the Frasch process and the Stark process have justly been sources of great profit to the Standard companies using them.

IV. *Extension of pipe lines to new fields.*

1. The Standard Oil Co. alone early adopted and has always pursued the policy of extending its pipe lines without delay and regardless of cost to new oil fields upon their discovery. The story of the entry of the Standard Oil interests into the pipe line business has previously been told (*ante*, p. 29–31). In the early eighties, they had two pipe lines nearly completed to the seaboard, one through Pennsylvania and one through the State of New York; also a trunk line to Cleveland, one to Buffalo and one to Pittsburg. All of these pipe lines were used for transporting oil from the Pennsylvania or Appalachian field, the only then known source of supply. In 1886, however, the so-called Lima field, in Ohio, was discovered. As already stated, crude oil from this field was so highly charged with sulphur as to be useless except as fuel, until the Frasch process was developed. The problem of refining this Lima oil having been thus solved, pipe lines were extended so as to connect the existing lines to Cleveland and the East with the gathering system in the Lima field and with a line to Chicago which had shortly before been constructed (*c*). At about the same time, a great new refinery which had been started at Whiting, near Chicago; a new refinery at Lima, Ohio; and the Standard's old refinery at Cleveland, were equipped for the use of the Frasch process, and refined only Lima crude by this exclusive patented process from about 1890 to the early part of 1906 (*d*). Thus the Standard Oil

(*a*) Record, Vol. 17, p. 3494.
(*b*) Record, Vol. 17, p. 3494–5.
(*c*) Archbold, Vol. 17, p. 3433.
(*d*) Burton, Vol. 16, p. 2635, 2641-2.

Co., by its farsighted policy in reaching out to the new Lima fields and by making available, through inventions, what was to others a comparatively useless product, supplemented its already inadequate supply from the declining Pennsylvania field and secured an ample store of raw material for the next fifteen years. Another important result was to maintain the value of the investments in the Eastern pipe line system; for, when at a later day, seaboard refineries were equipped for the use of the Frasch process, Lima crude was pumped from Ohio and Indiana to Bayonne and Philadelphia through the Eastern system of pipe lines, which thus became parts of a system of through transportation after their value for local transportation from the districts which they immediately reached had largely disappeared.

2. With the decline of the Lima field, the Standard's great investments in refining plants and pipe lines would have again depreciated in value and ultimately become useless but for the discovery of the great Mid-Continent field and the construction by the Prairie Oil & Gas Co. after 1900 of a private trunk pipe line all the way from Oklahoma to Griffith, Indiana, where it connects with the pipes of the Indiana Pipe Line Co., —thus completing a direct connection between Oklahoma and the Atlantic seaboard. Since the completion of this pipe line by the Prairie Oil & Gas Co., crude oil from the Mid-Continent field has been pumped in a continuous stream all the way from Oklahoma to the Atlantic seaboard, a distance of some 1600 miles, with connections, however, for delivery to Kansas City, North Alton, Ill., and Whiting, Ind., for the supplying of the refineries there situated (*a*). The last great field to be opened was that in southern Illinois, from which the Ohio Oil Co., about 1906, constructed a private pipe line connecting with the Eastern trunk system. Thus by their enterprise and great outlay, the Standard Oil interests have made available additional great supplies of raw material, thus insuring the further continuance of their business for another long period of years and at the same time maintaining the value of all the Eastern system of pipe lines.

IV. This story of the development and use of pipe lines emphasizes the position taken by numerous witnesses of the

---

(*a*) Archbold, Vol. 17, p. 3234; Towl, Vol. 20, pp. 219–20.

defendant, that pipe lines are adjuncts to refineries, having been built, substantially without exception, to carry crude oil to the refineries belonging to the real owners of the pipe lines. On this point Mr. Archbold says (*a*):

> "The pipe lines are an absolutely necessary adjunct, a necessary part of the business as a whole. The volume of the business as a whole has entirely outgrown the possibilities of railroad transportation, and the transportation by pipe is a more convenient method in every way; and in the construction of the large refineries necessary for the doing of the business, pipe lines of a necessity had to be created in order to insure them a regular supply, a sure supply, of crude oil. They have become a part of the great scheme of the business with reference to reaching the markets and they are essential in their use.

SECOND: MEANS FOR GETTING CRUDE OIL TO THE REFINERIES.

I. This means consists of pipe lines, which have already been discussed in some of their aspects. Something remains, however, to be said as to the pipe line system as a whole. In size, extent of territory reached, number of men employed and the vast amount of the crude oil exported, the Standard's pipe line system is comparable with a great arterial system and its branches. Disregarding decimals, in 1882 the system included 2,468 miles of gathering lines and 1,062 miles of trunk lines. In 1899 these had grown to 10,740 miles of gathering lines and to 3,905 miles of trunk lines or about 14,653 miles in all. In 1908 they had grown to 45,227 miles of gathering lines and 9,338 miles of trunk lines, or 54,616 miles in all (*b*), all of which with the exception of the Crescent and Mellen lines acquired in 1895, and with the further exception of 48 miles of trunk line (*c*) and not to exceed 750 miles of gathering lines (*ante* p. 30, 61) were constructed out of their own means by various pipe line companies owned, organized and operated by the Standard Oil interests. This great system of pipe lines extends from Oklahoma to the Atlantic seaboard, its branches reaching to all oil fields in Oklahoma, Kansas, Illinois, Indiana, Ohio, Kentucky, New

---

(*a*) Record, Vol. 17, p. 3397.
(*b*) Def. Ex. 261, Vol. 19, p. 621.
(*c*) Archbold, Vol. 17, p. 3630.

York, Pennsylvania and West Virginia, and to all the Standard refineries. It is operated by a small army of laborers, engineers and executive officers. Its pipes throughout the entire system are worked to full capacity night and day, substantially every day in the year (*a*). Together with the California pipe lines, it transported in 1906 upwards of 65,000,000 barrels of crude oil (*b*), and in 1908 nearly 70,000,000 barrels (*c*). This great system, however, has been built up and maintained primarily as a means for bringing raw material to the Standard refineries.

THIRD: THE MAINTENANCE OF EXTENSIVE, UP-TO-DATE AND WELL SITUATED REFINERIES EMPLOYING THE LATEST AND MOST ECONOMICAL REFINING METHODS.

1. The policy of the Standard from the beginning in refinery building has been to construct large central refineries and, further, to enlarge these as the growth of the business required. A list of the refineries in use in 1906, their capacity and cost is given in Defendant's Exhibit 269 (*d*). The collective capacity of all the Standard's refineries has increased from 16,592,593 barrels in 1882 to over 70,000,000 in 1908 (*c*). The investment in refineries has grown from $17,000,000 in 1882 to over $57,000,000 in 1906 (*e*). Nor do the various refinery properties purchased from others form any substantial part of this great investment. Some of the greatest refineries were built entirely with Standard Oil capital,—as at Whiting and Sugar Creek. The investment in the Whiting refinery is over $8,000,000; at Sugar Creek about $1,170,000. Both were entirely constructed by the Standard Oil Co. of Indiana out of its own means. And even where the nucleus of a refinery consists or ever consisted of a plant purchased from some other concern, that nucleus has been so added to as to form but an insignificant part of the existing plants. The refinery at Richmond, California, representing an investment of nearly $4,000,000, was built on land

---

(*a*) Towl, Vol. 20, p. 319-20.
(*b*) Def. Ex. 268, Vol. 19, p. 627.
(*c*) Archbold, Vol. 17, p. 3251-2.
(*d*) Record, Vol. 19, p. 627.
(*e*) Archbold, Vol. 17, p. 3253.

purchased by the Pacific Coast Oil Co. after that company's small properties were acquired by the Standard Oil Co. of New Jersey. On the other hand, the Atlas Works at Buffalo, which were purchased in 1882 for $84,000, represented in 1906 an investment of $1,466,060.63, all of which except the original $84,000 was furnished by Standard Oil interests. These examples fairly represent the whole.

II. Nor has money been spared in making every refinery the very best of its class, the equipment frequently being renewed as improved methods and machinery have succeeded each other. (*a*)

III. While it is not claimed that the Standard Oil Co. in all or most cases was the first to locate refineries at advantageous points, yet it has always been the Company's policy to concentrate its manufacturing at the best selected points; thus: on the Atlantic seaboard, at New York, Philadelphia and Baltimore; on the Great Lakes, at Buffalo, Cleveland and Whiting, Indiana, a suburb of Chicago. The great refinery at Sugar Creek, Missouri, draws its crude from the nearby Mid-Continent field and its products reach easily the domestic trade in the Southwest. From the refineries on the Atlantic seaboard, fleets of tank steamers carry the refined oil to Europe, South America, Africa and Southern Asia, while at Richmond, California, ships are loaded every day alongside the refinery with cargoes for all the countries of Eastern Asia. (*b*)

FOURTH: DEVELOPMENT AND EXTENSION OF MARKETS, DOMESTIC AND FOREIGN.

I. The introduction of the system of marketing stations, to which oil is transported in bulk from the refineries by means of tank cars and from which the oil is distributed to the retail trade by tank wagons, has revolutionized the methods of marketing illuminating oil. In 1882, there were but 130 marketing stations operated by Standard Oil interests, which were located in the larger cities and towns. The trade was supplied largely through jobbers at the more important points and through general merchants at the smaller points. In 1888, the

---

(*a*) Archbold, Vol. 17, pp. 3245, 3256, 3265.
(*b*) Archbold, Vol. 17, p. 3253-5.

number of stations had increased to 313, and, in 1906, to 3,573, distributed throughout the United States according to the density of population. Almost without exception, these stations are the creation of the Standard Oil interests. Of these stations, 2,552 were established subsequent to July, 1890, of which only 16 were acquired from outside interests—all the rest being the creation of one or the other of the Standard Oil companies (*a*). From every one of these stations, one or more tank wagons make frequent visits to the retail dealers in the town in which the station is situated and in the smaller towns and villages in its vicinity and fill their oil tanks, without charge for cartage or service, and without leakage or other loss through the use of barrels. There has thus resulted great saving in cost and trouble to the smaller dealers, a great increase in the consumption of oil and a great extension of the Standard's own business (*b*).

II. With even greater skill and against stupendous obstacles, the Standard Oil Co. has built up a great foreign marketing business, so that now its products reach all the principal countries of the world. The export business has always faced severe competition from the foreign oil fields (*c*). In Defendants' Exhibit 275 (*d*) is given a list of over 400 foreign oil concerns, of which 147 have an aggregate capital of $274,915,185, while the total capital of the whole list, though not stated, must be vastly in excess of that sum. Thus the total estimated capital of the refineries in Austro-Hungary alone is $70,000,000 (*e*). An effort was made by Counsel for the Government to break down the force of these facts by referring to concerns in the list as being "little grocery companies (*f*)." The Court will find in the list not less than 65 companies, in various foreign countries, with capital running from $1,000,000 up to $32,000,000, including only those whose money capital is stated. These are facts which cannot be minimized. In extending its foreign trade, the Standard Oil Co, now sends abroad 63 per cent. of its entire product in illuminating oil and a very large percentage of all its other products (*g*).

(*a*) Archbold, Vol. 17, p. 3242–4; Def. Exs. 263, 264, Vol. 19, p. 622–23; Def. Ex. 278, Vol. 19, p. 664.
(*b*) Archbold, Vol. 17, p. 3244.
(*c*) Archbold, Vol. 17, p. 3289–90.
(*d*) Record, Vol. 19, p. 654–9.
(*e*) Archbold, Vol. 17, p. 3286.
(*f*) Record, Vol. 17, p. 3287.
(*g*) Archbold, Vol. 17, p. 3288.

Mr. Archbold says (*a*):

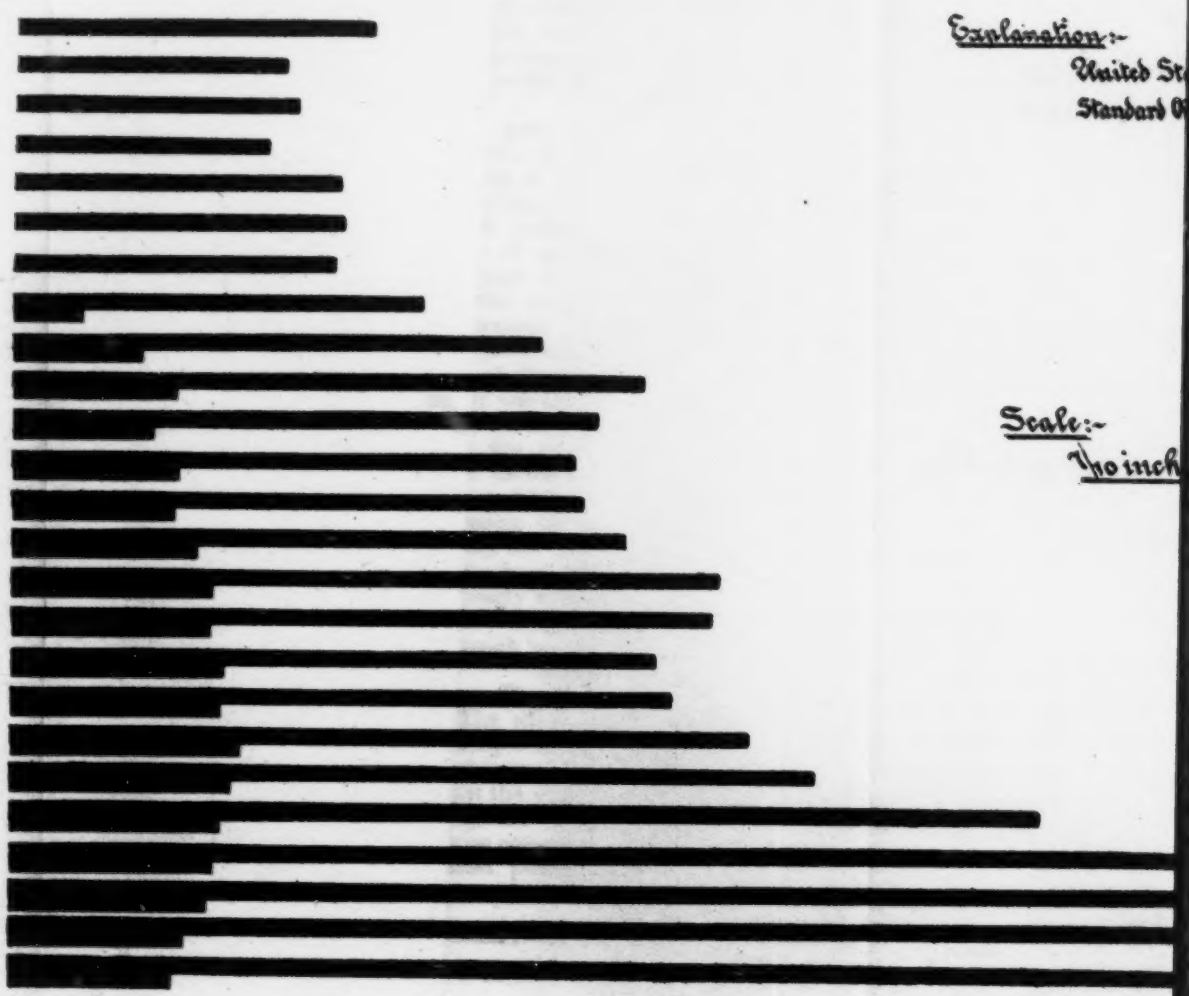
> "It has been a business which has required the greatest possible effort in the way of its introduction and successful distribution in the faraway countries. * * * In India we have for a very considerable time had competition from their own production, and they are protected in their industry there to an extent that makes it an exceedingly difficult thing for us to compete with them. The same is true of the Dutch Indies, where there is, of course, a very large production. * * * There is * * * a very considerable production in India and British Burmah and * * * in Japan—which is increasing there. We have gone forward against tremendous obstacles of course, in the earlier history especially, towards the creation of markets and the holding of the markets for American oil.
>
> * * * It has been a very difficult task indeed—a task that has called for large investments of money and patient and persistent effort on the part of our agents in every way. * * * In Europe the competition has been even more severe. The enormous production of Russia has sought a market more particularly in eastern Europe and to the eastward of that—in Turkey and into the Orient. They have been our active competitors for many years. Of recent years a very large production of oil has been found in the nearer States of Europe, namely, in Galicia and Roumania more particularly, some in Germany and a little in Alsace; but Roumania and Galicia are coming to be very important oil-producing States, and they are constant and aggressive competitors for the trade of the Continent. * * * our trade is pretty nearly world-wide. There is scarcely a civilized part of the globe that the Standard Oil Company does not reach in one way or another with American oil. * * * It has been a process since the organization began. The effort began at once for the extension of trade. The effort of the Standard Oil Company, from its very inception, has been the development of the resources of this country and the extension of its commerce throughout the world. * * * We are rapidly as possible putting the same plan of distribution into operation in all those countries that we have here, so as to, with the greatest possible economy, reach the consumer."

(*a*) Record, Vol. 17, p. 3289-90.

DEFENDANTS' EXHIBIT 266.

Production of Crude Oil. Comparing Standard Oil production with total in the United States. Total production taken from UNITED STATES GEOLOGICAL SURVEY, "Production of Petroleum," 1906, page 10.

Year:	Total in the United States. Bbls 42 gallons	By Standard Oil Bbls 42 gallons
1882	30.349.897	none.
1883	23.449.633	"
1884	24.218.438	"
1885	21.858.785	"
1886	28.064.841	"
1887	28.283.483	"
1888	27.612.025	"
1889	35.163.513	5,589.606
1890	45.823.572	11.019.205
1891	54.292.655	14.232.931
1892	50.514.657	12,182.345
1893	48.431.066	13.966.176
1894	49.346.516	13.901,296
1895	52.892.276	15,928.796
1896	60.960.361	17,533,844
1897	60.478.516	17.364,845
1898	55.364.233	18,549,068
1899	57.070850	18,080.267
1900	63.620.829	19,894.749
1901	69.389.194	18,828,822
1902	88.766.916	17,839,960
1903	100.461.337	17,319,907
1904	117.080.960	16,904,030
1905	134.717.580	15,148,371
1906	126.493.936	14,032,313

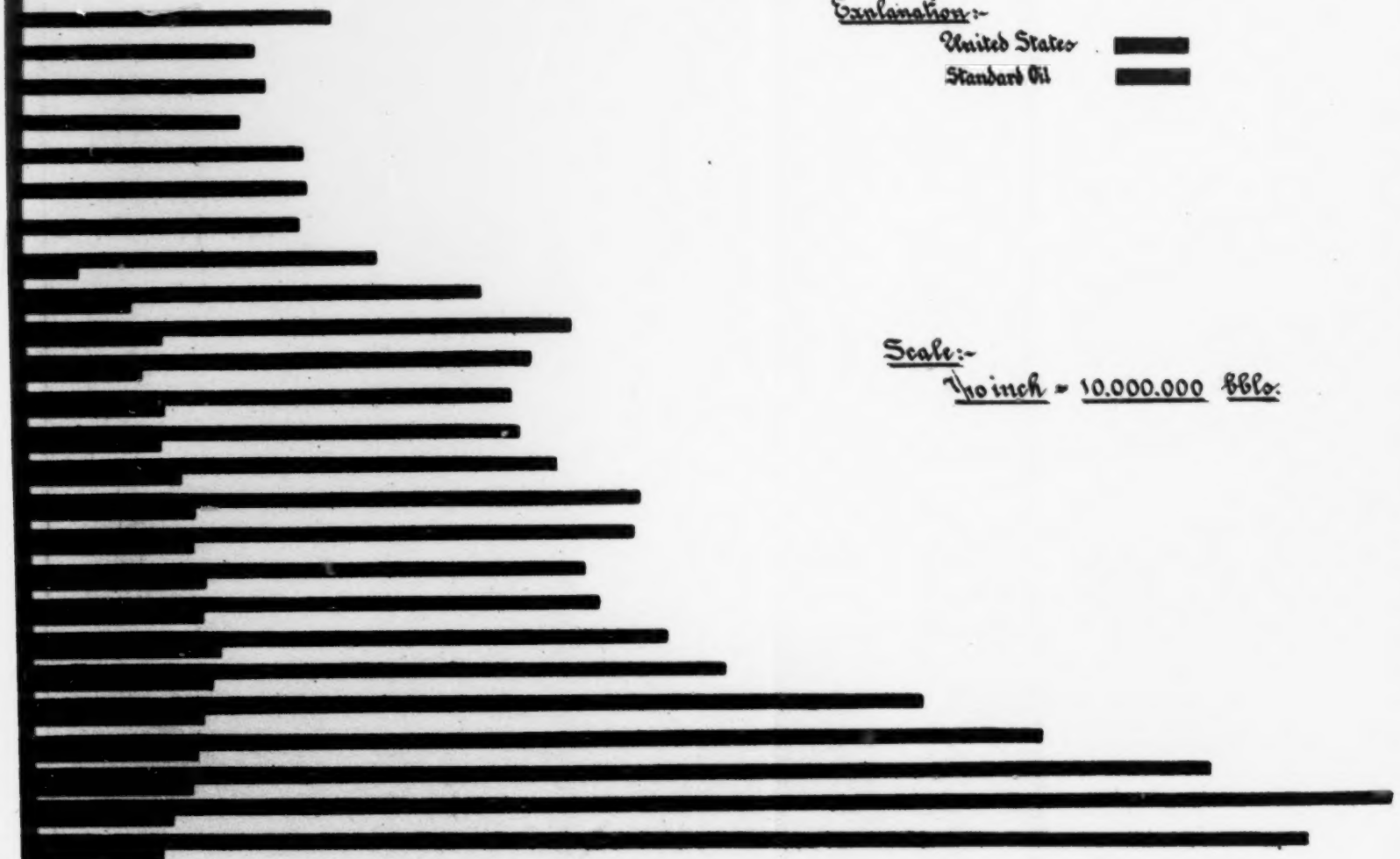


Explanation:-
United St
Standard O

Scale:-
1/10 inch

DEFENDANTS' EXHIBIT 966.

Production of Crude Oil. Comparing Standard Oil production with total in the United States. Total production taken from UNITED STATES GEOLOGICAL SURVEY, "Production of Petroleum," 1906, page 10.



CHAPTER XII.

COMPETITORS: THEIR GROWTH AND THE PROFITABLE EXPANSION OF THEIR BUSINESS IN EVERY BRANCH OF THE OIL INDUSTRY.

FIRST: PRODUCTION.

The Standard began the production of crude oil in 1889, and in 1898 its percentage of the total production amounted to 33 per cent. From that date its percentage was continuously reduced, *and by 1906 had declined to 11.11 per cent.* (*a*). The total production of crude oil in 1898 was 55,364,233 barrels, and this had increased in 1906 to 126,493,936 barrels, *88.89 per cent. of which was controlled by others than the Standard* (*b*). (See Chart facing this page.)

Among those controlling production are several of the Standard's most important competitors in refining the crude, such as the Gulf Refining Co. (*c*), the Texas Company (*d*), Crew-Levick Oil Co. (*e*), and the Pure Oil Co. The Pure Oil Co. owns directly producing properties in the Pennsylvania and Illinois fields (*f*); it also owns the whole or a majority of the stock of the following producing companies, namely: Pure Oil Producing Co., operating in the West Virginia field; Pure Oil Operating Co., in the Illinois field, and the Quaker Oil & Gas Co. in the Mid-Continent field (*g*).

SECOND: MANUFACTURE.

1. *1890–1906. Increase of Competitive Refineries.*

There have always been refiners of oil competing with the Standard since the beginning of the business (*h*). But the great development and growth of competition have occurred in more recent years, and most markedly since 1898 (*i*). There are 10 considerable refineries which were erected by competitors before 1890, some long before, and which have

---

(*a*) Defts' Exh. 266, Record, Vol. 19, p. 626.
(*b*) Defts' Exh. 266.
(*c*) Record, Vol. 16, p. 2658.
(*d*) Record, Vol. 16, p. 2658.
(*e*) Record, Vol. 20, p. 107.
(*f*) Record, Vol. 3, p. 1440.
(*g*) Record, Vol. 3, pp. 1440–1441.
(*h*) Record, Vol. 1, p. 243–244; Vol. 5, p. 2542; Vol. 6, p. 2636, 2642, 2705, 3015, 3131–3132; Vol. 3, p. 1467; Vol. 16, p. 3139; Vol. 17, p. 3446; Vol. 20, p. 31.
(*i*) Record, Vol. 6, p. 2704.

been operated by them continuously down to the present day (*a*). By 1895 this number had grown to 38 (*b*). *In the year 1906, there were in actual operation independent refineries to the number of one hundred and twenty-three* (*c*). Of these, 55 are in Pennsylvania, Ohio, New Jersey and New York; 25 are in Kansas and Oklahoma; in Illinois there are 4; in Texas, 10; in Louisiana, 3; in Kentucky, Colorado and Wyoming, 4; and in California, 22. The National Refining Company owns 5 of these separate refining plants; the Gulf Refining Company, 2; the Cornplanter Refining Company, 2; Crew-Levick Oil Company, 3; Sunlight Oil and Refining Company, 2; and the Uncle Sam Oil Company, 3. The remaining 112, so far as appears, are owned by separate business interests. (For complete list, see Appendix III., *post*, p. 266.)

The 38 independent refineries existing in 1895 have increased in capacity at least 25 per cent. since that time (*d*). But it is in the increasing size of the newly constructed independent plants that the growth of competition is most plainly to be seen (*e*). The Texas Company's plant at Port Arthur, Texas, has a yearly capacity of nearly 4,000,000 barrels of crude oil, and the Gulf Refining Company's plant at the same place has a capacity of more than 4,000,000 barrels. The capacity of the Union Oil Co., one of the 22 competitors of the Standard in California, is 2,500,000 barrels, which alone is more than one-third the total capacity of the Standard's refining facilities in that State. (*f*)

2. *1899–1906. Consumption of Crude Oil by Competitors: The Corresponding Increase of Their Trade.*

The total production of crude oil in the United States increased from 57,070,850 barrels of 42 gallons in 1899 to 126,493,936 barrels in 1906 (*g*). Of this total production the Standard refined or otherwise utilized and sold 41,212,314 barrels in 1899, and 58,924,601 barrels in 1906 (*h*); while others

---

(*a*) Record, Vol. 5, p. 2542; Vol. 6, p. 3015, 2840, 3207, 3061, 2651, 2705: Vol. 20, p. 106–107.

(*b*) Record, Vol. 6, p. 2690–2709.

(*c*) Record, Vol. 19, p. 662; Vol. 17, p. 3290.

(*d*) Record, Vol. 6, p. 2700. (*e*) Record, Vol. 6, p. 2691.

(*f*) Record, Vol. 6, p. 2704, 2710–2711; Defts.' Exh. 269, Vol. 19, p. 627; Report on Petroleum of Commissioner of Corporations, Vol. 2, p. 651.

(*g*) Defts.' Exh. 266, Record, Vol. 19, p. 626.

(*h*) Defts.' Exh. 267, Record, Vol. 19, p. 626. NOTE: The Standard consumed in addition in 1899, 4,634,965 barrels taken from storage and in 1906, 6,033,700 barrels taken from storage: Pet.'s Exh. 958, Defts.' Exh. 289.

than the Standard refined or otherwise utilized and sold 13,977,014 barrels in 1899 and 53,528,855 barrels in 1906 (*a*). In other words, the amount of crude manufactured by competitors into all petroleum products, irrespective of the grades or the values of the products (including doubtless to a considerable extent asphalt, engine distillate and fuel oil (*b*), and perhaps some crude sold directly as fuel oil) almost quadrupled during that period (*c*).

The growth in the consumption of the crude by competitors means, of course, a corresponding growth of their trade from 1899 to 1906 in the products derived from the crude.

(A.) *Illuminating oil : domestic trade.* A considerable portion of their increased trade was in the domestic sales of illuminating oil. The illuminating oil refined and sold by competitors in the United States and Canada increased from 1,015,463 barrels of 50 gallons in 1899 (*d*) to 1,752,433 barrels in 1906 (*e*) ; *which was an increase of 736,970 barrels, or 72.6 per cent., while the total domestic sales of illuminating oil by the Standard increased only 6.5 per cent. during the same period* (*f*).

(*a*) NOTE: The amount of crude used by competitors is arrived at by deducting from the total production the amount used and the amount stored by the Standard in 1899 and 1906 respectively. The amount stored in 1899 was 1,881,522 barrels, and in 1906 was 14,040,480 barrels. See Pet.'s Exhs. 958-960, Vol. 21, p. 132; Defts.' Exh. 289, Vol. 19, p. 687; Vol. 19, pp. 683, 627; Vol. 17, p. 3518.

(*b*) Record, Vol. 17, p. 3518.

(*c*) NOTE: The increase of 39,551,841 barrels in the amount of crude oil handled by competitors corresponds with the growth of their refining capacity. The capacity of independent refineries in existence prior to 1899 has increased at least 25% since that time (Record, Vol. 6, p. 2712), or from 13,977,014 barrels to about 17,477,014 barrels, an increase of 3,500,000 barrels. Of the 85 new refineries erected since 1898, four, namely, the Gulf Refining Co. The Texas Co., Union Oil Co. and Pure Oil Co. (Record, Vol. 6, p. 2704), have an aggregate capacity of about 11,200,000 barrels. It is safe to say that the remaining 81 independent refineries have an aggregate capacity exceeding 25,000,000 barrels. Mr. Emery's refinery in 1895 had a capacity of 365,000 barrels a year, which he said, was "not large as they go now. There are refineries now that handle eight to ten thousand barrels a day" (Vol. 6, p. 2691), equal to 3,000,000 barrels a year. But, even taking as the average Emery's capacity in 1895 of 365,000 barrels, the total capacity of 81 refineries to-day would be 29,565,000 barrels.

(*d*) Record, Vol. 8, p. 918, 1002. (NOTE: Quantity figured from percentage.)

(*e*) Pet.'s Exh. 387-*b*, Vol. 8, p. 917. (NOTE: This quantity represents what competitors are known to have sold, but not all that they may actually have sold. Sales by competitors in West Indies shown in this exhibit are deducted.)

(*f*) Pet.'s Exh. 396, Vol. 8, p. 1002; Pet.'s Exh. 387-*b*, Vol. 8, p. 917. (NOTE: Sales in West Indies, which do not appear in Exhibit 396, are deducted from total shown in Exhibit 387-*b*.)

(B.) *Illuminating oil: exports.* A still greater increase appears in the exports of illuminating oil refined by competitors. These increased from 1,371,783 barrels of 50 gallons in 1900 to 2,406,518 barrels in 1906, or almost 100 per cent., while the Standard's proportion of the export trade declined from 90.8 per cent. to 86.3 during the same period (*a*).

(C.) *Other products.* But the greatest gains have been made by competitors in the sale of petroleum products other than illuminating oil. The manufacture by the Standard of petroleum products other than illuminating oil increased from 38.12 per cent. of its total manufacture in 1900 to 52.98 in 1906. (See *post* p. 151). How far this rate of increase has been exceeded by the competitors is evident from the enormous increase in their consumption of the crude. It is also otherwise shown. In 1899 the competitors owned or had the use of 3,881 tank cars for moving their refinery products. *In 1905, while the Standard had 8,868 tank cars in all, the number of tank cars owned by competitors or available for their use was 8,171, or 48 per cent. of the total (b).* H. C. Boardman, a wholesale jobber selling the oils of independent refiners in competition with the Standard at Augusta, Ga., testifies that while he secured one-third of the illuminating oil business there, his share of the total volume of trade in lubricating oils was 75 per cent. (*c*). It appears that, in the Baltimore Division of the Standard of New Jersey alone, the Standard meets competition from 23 wholesale jobbers engaged principally in the sale of lubricating oils (*d*). The G. T. Wofford Oil Co. made "very large sales of lubricating oils" at Birmingham and vicinity after 1904 (*e*). One-half of the crude oil produced in California is not convertible into illuminating oil (*f*), and various other products are derived from the unrefinable portion. Many of the competitors use it for making asphalt (*f*). In Los Angeles

---

(*a*) Pet.'s Exh. 377, Record, Vol. 8, p. 904.
(*b*) Record, Vol. 18, p. 274; Vol. 14, p. 1597-8.
(*c*) Record, Vol. 5, p. 2171, 2181.
(*d*) Record, Vol. 13, p. 1312-1314, 1345, 1401-1402, 1445.
(*e*) Record, Vol. 5, p. 2181.
(*f*) Record, Vol. 17, p. 3518.

County, Cal., there are five refineries whose principal product is asphalt *(a)*. Others distill from the unrefinable crude what is known as engine distillate, a product peculiar to the California crude, and widely used to supply engine power *(a)*. The residuum is sold as fuel oil *(a)*. *It may be* that crude oil is sold to a considerable extent directly as fuel without going into the still, but even so it is none the less sold in competition with the Standard.

3. *1906-1908. Continued Growth of Competitors.*

The expansion of the business of competitors between 1899 and 1906, great as it was, has continued even more rapidly since that time, as indicated by their constantly increasing manufacturing and transportation facilities and their consumption of crude oil. The tank cars available for competitors, which, as we have seen, had reached the number 8,171 in 1905, further increased to 10,211 in 1908, a total increase of 263 per cent. since 1899 (*b*). The Gulf Refining Company, which owns the largest refinery of any single competitor, has reached its greatest strength since 1906. We find it, in 1907, establishing marketing stations in the New England states (*c*). In 1907, it appears at Birmingham, Ala., and three months later has secured 30 per cent. of the entire trade there in competition with the Standard Oil Co., the G. T. Wofford Oil Co., and the Alabama Oil Co. (*d*). The new refinery of the Pure Oil Co. at Marcus Hook, Pa., begun in 1903, was not completed until 1905. The refinery of the Texas Company at Dallas, Tex., and the refinery of the Valvolene Refining Co. at Butler, Pa. (*e*), were completed in 1907. The Indian Refining Co. is growing (*f*). In the words of Mr. Emery, it "is after the Standard." The production of crude oil in California in 1907 was 40,085,000 barrels, of which one-half was suitable for refining into illuminating oil. Of the refinable portion the Standard used or stored 9,173,166 barrels and the competitors 10,869,334 (*g*).

(*a*) Record, Vol. 17, p. 3518, 3501.
(*b*) Record, Vol. 18, p. 274.
(*c*) Record, Vol. 12, p. 722; Vol. 6, p. 3231.
(*d*) Record, Vol. 5, p. 2160.
(*e*) Record, Vol. 6, p. 2700.
(*f*) Record, Vol. 6, p. 2711.
(*g*) Record, Vol. 19, p. 683; Vol. 17, p. 3518.

THIRD: MARKETING.

The manufactured products of the independent refiners are shipped and sold in practically every part of the United States (*a*). The more important of these competitors have merchandising departments of their own or sell through subsidiary marketing companies owned by them, having local marketing stations throughout their territory where oil is stored in bulk and thence distributed by tank wagons or in barrels to the trade. Fifteen refiners have local marketing stations in Ohio alone (*b*). The Pure Oil Co. has stations in New York, Pennsylvania, Delaware, New Jersey and the Southern States (*c*); the Gulf Refining Co. in New England (*d*), and over the entire South (*e*); the Crew-Levick Oil Co. in New York, Pennsylvania, New Jersey, Delaware, Illinois and Maryland (*f*); the Cornplanter Refining Co. as far west as St. Paul (*g*), and it operates subsidiary marketing companies in New York (*h*), Pennsylvania (*i*), and New England (*j*). The National Refining Co. markets its oils largely through subsidiary companies, some of which are the Atlas Oil Co., and the Globe Oil Co. in Ohio (*k*), Indiana Oil Tank Line Co. in Indiana (*l*), Merchants Oil Co. in Illinois (*m*), National Oil Co. in Missouri, and the Evansville Tank Line Co. and the Northern Oil Co. (*n*).

The products of all the independent refiners are also sold everywhere through wholesale jobbers, who in their turn are gradually establishing bulk stations for the storage of oil and distribution by tank wagons throughout the territory in which they operate. In Ohio alone there are 50 such jobbers, 10 of whom maintain tank stations (*o*). The business of some of these wholesale jobbers, such as Hisgen Bros. Oil Co. in New

---

(*a*) Record, Vol. 10, p. 1636–1659.
(*b*) Record, Vol. 18, p. 270.
(*c*) Record, Vol. 3, p. 1443–1445.
(*d*) Record, Vol. 6, p. 3231.
(*e*) Record, Vol. 12, p. 870; Vol. 5, p. 2160.
(*f*) Record, Vol. 20, p. 108.
(*g*) Record, Vol. 6, p. 3213–3232.
(*h*) Record, Vol. 20, p. 55–57; Vol. 12, p. 714.
(*i*) Record, Vol. 6, p. 3233.
(*j*) Record, Vol. 6, p. 3230.
(*k*) Record, Vol. 13, p. 1569–1570.
(*l*) Record, Vol. 5, p. 2526.
(*m*) Record, Vol. 6, p. 2826.
(*n*) Record, Vol. 13, p. 1569–1570.
(*o*) Record, Vol. 18, p. 270.

York and the New England States, and the Red C Oil Co. with its subsidiaries, the Columbia Oil Co. and the Richmond Oil Co., operating throughout the Southern States, has grown to very large proportions.

FOURTH: PIPE LINES.

Most of the stronger competitors have established as adjuncts to their refineries gathering systems of pipe lines for the transportation of crude oil from the various oil fields. Some of these are the National Refining Co., Cornplanter Refining Co., Crew-Levick Oil Co., Emery Manufacturing Co., Sunlight Oil & Refining Co., Paragon Refining Co., Union Oil Co. of Calfornia, and the Muir Oil Co. (*a*). A gathering system in which the Pure Oil Co. and various other independent refiners are interested is that of the Producers' and Refiners' Oil Co. (Limited) (*b*). It appears that between 1900 and 1906 the receipts of crude oil by the Producers' and Refiners' Oil Co., which was refined and sold by the Pure Oil Co. and associated refiners, increased from 1,321,572 barrels to 2,771,384 barrels, or 100 per cent. (*c*). Several refiners own or control systems of trunk lines that extend from their refineries on the Atlantic seaboard or the Gulf to one or other of the interior oil fields, where they connect with systems of gathering lines. Such are the Gulf Refining Company and the Texas Company (*d*), and the Pure Oil Company (*e*).

FIFTH: INTEGRATION.

Some of the competitors, such as the Pure Oil Co., the Gulf Refining Co., the National Refining Co., the Crew-Levick Oil Co., the Union Oil Co., and the Cornplanter Refining Co., have developed the system of integration to a degree approaching that of the Standard. All of these concerns have pipe lines, refineries and local marketing facilities. All excepting the

---

(*a*) Record, Vol. 1, p. 369–370; Vol. 6, p. 3211, 2769.
(*b*) Record, Vol. 3, p. 1437.
(*c*) Record, Vol, 3, p. 1451.
(*d*) Record, Vol. 16, p. 2657, 2658, 2682; Vol. 6, p. 2710.
(*e*) Record, Vol. 3, p. 1430, 1444, 1446–1447.

National Refining Co. are large producers of crude oil; all own tank cars and some own tank vessels. They all carry the elaboration of by-products to substantially the most complete point permitted by the character of the crude oil which they use (*a*) (*b*).

SIXTH: PROFITS OF COMPETITORS.

Not only has the volume of trade secured by the competitors grown faster than that of the Standard, but, large and small, (with the exception of jobbers, who, adhering to antiquated methods, have been eliminated by the refiners selling directly to the retail trade (*c*),) they have done an increasingly profitable business.

Thus, the Pure Oil Co., beginning with a capital somewhere between $300,000. and $400,000. in 1895 (*d*), has now $10,000,000. of authorized capital stock (*e*), of which between $6,000,000. and $7,000,000. has been issued (*f*), and for the last two years it has declared dividends of 8% on its stock outstanding (*g*); while the G. T. Wofford Oil Co., a little jobbing concern with a tank wagon service at Atlanta, Ga., started in 1904, has increased its trade year by year and finds it a successful, satisfactory and profitable business (*h*). The Emery Manufacturing Co.'s original investment of $5,000. has grown to $550,000. (*i*). The New York Lubricating Oil Co. has been "a very profitable enterprise" (*j*). The same is true of the Waverly Oil Works (*k*), the American Oil Works (*l*), the Columbia Refining Co. (*m*), and of all other refiners whose financial condition has been the subject of testimony (*n*). (And as to marketing competitors see *post* this brief p. 180).

(*a*) Record, Vol. 3, p. 1442; Vol. 12, p. 861.

(*b*) Record, Vol. 3, p. 1440–1441, 1443–1445, 1430–1440, 1442; Vol. 16, p. 2657, 2658, 2682; Vol. 6, p. 3232; Vol. 12, p. 861, 870; Vol. 20, p. 107–108; Vol. 1, p. 369; Vol. 6, p. 3213, 3233–4, Vol. 20, p. 55–57; Report on Petroleum of Commissioner of Corporations, Vol. 2, p. 637.)

(*c*) Record, Vol. 17, p. 3467–3468; Vol. 13, p. 1523.

(*d*) Record, Vol. 6, p. 2902.

(*e*) Record, Vol. 3, p. 1436.

(*f*) Record, Vol. 6, p. 2902.

(*g*) Record, Vol. 6, p. 2719.

(*h*) Record, Vol. 5, p. 2162.

(*i*) Record, Vol. 6, p. 2769.

(*j*) Record, Vol. 2, p. 533.

(*k*) Record, Vol. 5, pp. 2543–2545.

(*l*) Record, Vol. 6, p. 2900.

(*m*) Record, Vol. 6, p. 3068.

(*n*) Record, Vol. 12, p. 689.

CHAPTER XIII.

Pipe Lines.

The charge that the Standard Oil Companies, through their "control" of pipe lines, have monopolized the purchase and transportation of crude oil is entirely unsupported by the record.

FIRST: THE LEGAL STATUS OF PIPE LINES OWNED BY THE VARIOUS DEFENDANT COMPANIES.

I. Certain of these pipe lines were built entirely on private rights of way, without taking advantage of any statutory power of condemnation, and by companies not organized under pipe line laws. It is the position of the Defendants that such pipe lines are not and never were common carriers.

1. Prairie Oil and Gas Company.

This company is a private corporation, organized in the year 1900, under the laws of the State of Kansas, at the instance of the National Transit Co., which subscribed for and took all of its stock (*a*). It has no right of eminent domain. It handles only its own oil. It has never carried nor offered to carry any oil for the public (*b*). Its lines (shown on map Pet. Ex. 50) (*c*), were built entirely on private rights of way acquired by private purchase (*d*). There is some evidence that a portion of the private pipe lines of this and other companies were laid upon railroad property. Railroads, however, wherever possible, themselves acquire land in fee or private rights of way without condemnation proceedings. There is no proof that the pipe line companies have used any railroad property other than such as had been acquired by private purchase.

2. Ohio Oil Company.

This is a private corporation, organized under the laws of the State of Ohio, and having no right of eminent domain. Organized for the transaction of its own business, with pipe lines built on private rights of way, it has never carried or offered to carry oil for others (*e*).

(*a*) Record, Vol. 19, p. 689.
(*b*) Archbold, Vol. 17, p. 3297, 3283.
(*c*) Record, Vol. 7, p. 150.
(*d*) Record, Vol. 19, p. 689.
(*e*) Record, Vol. 19, p. 688.

3. Standard Oil Company of New Jersey.

The pipe lines from Unionville and Centrebridge across the State of New Jersey to Bayonne and neighboring points and the pipe line from Fawngrove, which crosses the State of Maryland to Baltimore, were all built on private rights of way bought by the companies constructing such pipe lines (*a*). These lines were sold to the Standard Oil Co. of New Jersey by the National Transit Co. and the New York Transit Co. in November, 1905,—some months before the Hepburn Bill had even been introduced into Congress (*b*). The charge that this transfer was in violation of any obligations which the National Transit Co. or the New York Transit Co. owed to the public and for the purpose of preventing the use of the pipe lines by independent shippers desiring to ship oil to the seaboard is entirely unwarranted. No such obligations ever existed. The New Jersey pipe lines never transported the oil of independent shippers, nor have they ever been asked to do so (*c*). They had been in existence for many years and the companies owning them were not organized under the laws of New Jersey or Maryland and had none of the rights or obligations of common carriers in either of those States (*d*). There are in fact in Maryland and New Jersey no statutes under which pipe line companies can be organized so as to acquire the right of eminent domain.

After the conveyance in 1905, the National Transit Co. and the New York Transit Co. continued to deliver oil to the Standard Oil Co. of New Jersey at the state lines of New York and Pennsylvania. When the Hepburn Act was passed, in August, 1906, the former two companies, as required by the said Act, filed or concurred in tariffs naming among the points at which they would deliver oil, the places at which they were already delivering oil to the Standard Oil Co. of New Jersey, to wit: Unionville, Centerbridge and Fawn Grove (*e*). The two pipe line companies also provided tankage at those points and the Standard Oil Co. of New Jersey constructed pumping

---

(*a*) Payne, Vol. 1, p. 367.
(*b*) Payne, Vol. 1, p. 365.
(*c*) Payne, Vol. 1, p. 335, 350; Archbold, Vol. 17, p. 3432-3.
(*d*) Payne, Vol. 1, p. 367.
(*e*) Pet. Ex. 39, Vol. 7, p. 124-129.

stations there, at which it has since received the oil from the pipe line companies and itself pumped the oil forward to the points of final delivery at the refineries (*a*). Anyone who desires to do so can ship oil by the common carrier trunk lines to Centrebridge, Unionville or Fawngrove and take it there from the tanks provided by the pipe line companies. There is nothing to prevent independent refiners from locating refineries at those points or from constructing private pipe lines thence to their refineries.

4. *Standard Oil Company of California.*

The pipe lines in California transport oil originating in that state to points of destination within that state, without at any time crossing the state line. They were built by the Standard Oil Co. of California, formerly the Pacific Coast Oil Co., on private rights of way, and are and have been used only for transporting oil of that Company (*b*).

5. The Defendants contend that no private pipe line can be arbitrarily compelled by Congress to assume the duties of a common carrier, unless it holds itself out to carry oil for others than its owners. The doctrine of the Elevator Cases would seem to control here. *Munn v. Illinois*, 94 U. S., 113; *Budd v. New York*, 117 U. S., 517, 536; *Brass v. North Dakota*, 153 U. S., 391, 404. In the last case cited, at page 404, the Court says in part:

> "We do not understand this law to require the owner of a warehouse built and used by him only to store his own grain, to receive and store the grain of others; such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profits."

II. All of the pipe lines owned by any of the Defendants, other than the four companies above named, are situated in the States of Pennsylvania, New York, Ohio, Indiana, Kentucky and West Virginia, and all of them (except the Crescent Pipe Line, the Mellen gathering lines purchased with the Crescent, and small portions of the lines of the National Transit Co.) were constructed and have al-

---

(*a*) Record, Vol. 1, p. 363–67.
(*b*) Record, Vol. 17, p. 3490–92.

ways been owned and operated by Standard Oil companies organized under general laws in some one of the said States, or in the case of the National Transit Co., under a special charter. There is no proof that any of the charters of such companies are in any respect exclusive in character and such is not the case. These companies, which are enumerated below (*post*, p. 118), have all filed or concurred in tariffs under the Hepburn Act of 1906.

SECOND: COMMON CARRIER PIPE LINES MUST BE CONSIDERED UNDER TWO HEADS, NAMELY:

I. Gathering lines; and

II. Trunk lines.

The gathering lines are the net-works of local pipes spreading over the oil regions and reaching from the wells of the various producers to railroad points or to points on the trunk lines (*a*). These trunk lines are main lines of pipe, extending frequently for great distances. Refined oil has never been transported through any of the Standard pipe lines. Gathering lines not owned by the Standard interests are to be found almost everywhere in the oil fields, and there is nothing to prevent these lines from extending a branch to the well of any producer who prefers to deal with them. Each of the great oil fields in the United States, except the Lima-Indiana field, is connected with the seaboard by trunk lines not controlled by Standard Oil interests.

I. Gathering lines and their operation in relation to purchases of crude oil.

1. *Gathering lines common carriers in actual practice.*

The gathering lines owned by the common carrier companies have at all times acted as common carriers in actual practice. Independent refiners at every point reached by the gathering lines of the Standard Oil companies have the same access to the oil fields through those lines that is enjoyed by the Standard Oil refiners (*b*). *A very large proportion of independent re-*

(*a*) Record, Vol. 1, p. 359. (*b*) Record, Vol. 1, p. 368-9.

finers get their crude oil through the gathering systems of the Standard lines.

2. *Crude Oil Purchases.*

The Standard Oil companies deal with the producer on the same footing as does any one else. The purchases of crude oil for their use in the Lima-Indiana and Appalachian fields are made by the Standard Oil Co. of New Jersey through the Joseph Seep Purchasing Agency. Mr. Seep has his principal office at Oil City, but he has his local agents at every important point throughout the oil producing territory. The oil is purchased after it is run into the gathering lines. The pipe line company gives the producer a certificate, which evidences the quantity of oil received. The producer may keep his oil in the pipe line for thirty days without cost, if he thinks that, during those thirty days, the market conditions may improve, or he may keep it indefinitely in storage in the tanks of the pipe line company at the stated charge of 25 cents a day per 1,000 barrels. There are other purchasers of crude oil in most of the oil producing sections, who purchase crude in competition with the Standard, and this has always been so. The producer may sell his certificate and the pipe line company will deliver the oil to the purchaser at stated delivery points within the district, which are railroad points (*a*).

3. *Crude Oil Prices.* The Standard Oil Co. has no means of fixing the price at which the producer will sell except to make its own offer attractive. The important elements taken into consideration in fixing the Standard's price are the following (*b*):

(A) *Supply and demand*, both domestic and foreign. First, the volume of domestic production must be considered. For example, the Mid-Continent Field is producing a quantity of oil that it is impossible to market, and which must therefore seek a level at which some new use can be made for it, such as fuel, or else be stored by someone willing to invest capital in

---

(*a*) Archbold, Vol. 17, p. 3235-6; Payne, Vol. 1, p. 379-80.
(*b*) Archbold, Vol. 17, p. 3236-8.

its storage. In like manner, as the Standard Oil Co. exports about 63 per cent. of the illuminating oil which it refines (*a*), the production of foreign fields must be considered. From 1899 to 1905 inclusive, the World's production of crude oil outside of the United States much exceeded in each year the total production within the United States; yet each fluctuated from year to year (*b*). The figures after 1905 are not given outside the United States. Mr. Archbold says (*c*):

> "We find currently at what price we can sell the finished products in the markets of the world, and that is a feature entering into our consideration of the price we can pay for crude oil here."

(B) The *yields* of the various kinds of crude oils are taken into consideration. This means that, in the process of distillation, the amount and value of the products of certain crudes are greater than those of the products of others. For instance, Pennsylvania crude gives the largest resultant yields and the most valuable products; Lima-Indiana crude comes next; Illinois crude is inferior to either.

(C) *Cost of production.* In the older fields, as in Pennsylvania, it costs more to get oil to the surface. Consequently, a higher price is demanded by producers there.

4. The *actual prices* paid for crude in the past are entirely inconsistent with any theory of monopolizing control over price. Beginning with 1892, when the prices for Pennsylvania crude were only 56c per barrel, those prices have risen with substantial regularity until in 1907 they reached $1.75 per barrel. Lima crude in 1889 sold for 15c per barrel and then rose by 1908 to $1.05 per barrel, having, in the meantime, touched $1.30 (*d*). The prices of Mid-Continent crude have remained relatively low on account of the enormous over-production. In 1903, the production was only 1,071,125 barrels, in 1905, 12,013,495 barrels, and, in 1907, 45,933,649 barrels (*e*). The Standard's price in 1908 for this crude was 41c, at the same time that its competitors were paying anywhere from 30 to 35 cents (*f*).

(*a*) Def. Ex. 276, Vol. 19, p. 660.
(*b*) Pet. Ex. 1044, Vol. 21, p. 225; Pet. Ex. 977, Vol. 21, p. 136.
(*c*) Record, Vol. 17, p. 3238.
(*d*) Pet. Ex. 977, Vol. 21, p. 136; Record, Vol. 16, p. 2638.
(*e*) Pet. Ex. 977, Vol. 21, p. 136; Record, Vol. 16, p. 2779.
(*f*) Record, Vol. 16, p. 2661.

5. *Producers satisfied.* The producers of oil have no grievance against the Standard. Not one witness has appeared on behalf of the Government to allege that the prices paid for crude by the Standard Oil Co. are unduly low, or are in any sense arbitrary or oppressive. The fairness of the Standard's dealings is testified to by numerous producers from the Mid-Continent field (*a*). Similar testimony from the Ohio field is given by Watts (*b*).

6. Nor have any refiners come forward to make charges against the Standard's pipe lines on the score of prices, except in the Pure Oil Co. matter, already fully explained (*ante*, p. 79), in which the latest date to which the charges apply is 1895, and also except in the instances where the payment of so-called " premiums " is charged, which instances are so few in number as to have no weight and were for the most part explained away on cross-examination (*c*).

II. Trunk Lines.

The trunk lines, as a practical matter, have never carried oil for anyone except the Standard Oil companies, and have never been asked to do so (*d*). This is due to reasons inherent in the nature of the business, and to the course of its development. Pipe lines, as already shown, are in their nature adjuncts to refineries, and the Standard's pipe lines have naturally been located with reference to the position of the Standard refineries (*e*). Nor are these facts peculiar to the Standard pipe lines. Mr. Payne testified (*f*):

> " I never knew a pipe line to be built that was not built to take care of the owner's own production, or to convey oil to the refinery that the investor in the pipe line owned : * * * * or sometimes both."

(*a*) Record, Vol. 16, p. 2664–5, 2717, 2747, 2774, 2840–1, 2779, 2783–84, 2786.

(*b*) Record, Vol. 16, p. 2708.

(*c*) Record, Vol. 6, p. 3021–22, 3027, 3194.

(*d*) Record, Vol. 1, p. 335; Vol. 17, p. 3432; Vol. 17, p. 3612.

(*e*) Record, Vol. 17, p. 3297; Vol. 1, p. 360.

(*f*) Record, Vol. 1, p. 360.

THIRD: THE CHARGE THAT THE DEFENDANTS HAVE EXACTED EXCESSIVE AND UNREASONABLE RATES FOR THE CARRIAGE OF CRUDE OIL OR RATES WHICH WERE DISCRIMINATORY AGAINST COMPETITORS IS WITHOUT SUPPORT.

I. *Rates not discriminatory.* There is no evidence that there has been any discrimination in rates. On the contrary, the record shows that the Defendant companies for whose refineries the common carrier pipe line companies have transported crude oil have paid the full rates.

II. *Reasonableness of rates.*

1. It is entirely immaterial to this controversy whether the rates on Defendants' trunk lines have been reasonable or not and whether they have or have not shown high paper profits. As already stated, these lines have never carried, nor have they ever been asked to carry, crude oil for any but Standard Oil companies (*a*); and whatever apparent profits have been made have been paid by one of the Defendants to another—in other words, by the Standard Oil Co. to itself.

Moreover, all pipe line profits are merged in the total profits of the whole Standard organization, which are separately considered below (*post*, p. 146), where it is shown that the total profits have not been unreasonable.

2. The nominal profits of the Standard Oil pipe lines are not so much due to the rates, as to the fact that the pipe lines were built, and have been extended and developed, principally with reference to their relation as factors in a great business, with the result that, in the practical operation of the lines, they are used at all times to their full capacity (*b*). Hence the ratio of those profits to operating expenses is relatively large. But it cannot be maintained that such profits would accrue to an independent pipe line charging the same rates but seeking its business from others who had no interest in enhancing the pipe line's profits by keeping its lines full; certainly that has not been shown. If independent

---

(*a*) Record, Vol. 1, p. 335; Vol. 17, p. 3432; Vol. 17, p. 3612.
(*b*) Record, Vol. 1, p. 360; Vol. 20, p. 319–320.

pipe line enterprises offered such returns as the nominal profits of the Standard's trunk pipe lines (due entirely to payments made by the other Standard Oil companies), unlimited capital would be available to duplicate the Standard's pipe line system.

3. As to the gathering charge of 20c per barrel, all the evidence in the case indicates that that charge is proper and reasonable and is an almost universal charge. It is the charge fixed by law in West Virginia (*a*). Where a different scale of gathering charges has been adopted by competitors, they are just as high, for example: The Texas Company, the independent pipe line from Glenn Pool, Oklahoma, to points in Texas, charges for "gathering, preliminary to receiving same (crude petroleum) into the main trunk line, 20c per barrel, *where the distance is 15 miles or more*" (*b*). *The average length of the gathering lines connected with the Standard Oil trunk lines is from 18 to 20 miles* (*c*).

FOURTH: THE COMMON CARRIER PIPE LINES OF THE DEFENDANT COMPANIES (POSSIBLY WITH THE EXCEPTION OF THE CRESCENT PIPE LINE) SHOULD BE REGARDED AS RELATED PARTS OF A SINGLE ORGANIC SYSTEM.

1. Excluding the pipe line of the Crescent Pipe Line Co., the Mellen gathering lines, and a small mileage of the lines of the National Transit Co., *the existing Standard pipe lines have each been constructed by some Standard company with its own means, and no part of them was ever owned by any independent or competing corporation or individual* (*d*). The manner in which the system of lines has gradually been extended as fresh oil fields have been discovered has already been shown (*ante*, p. 92–3).

2. The various states have granted the power of condemnation only to pipe line corporations organized under the laws

---

(*a*) Laws of West Va., 1891, Ch. 44, Sec. 7.
(*b*) Def. Ex. 221, Vol. 19, p. 608–9.
(*c*) Record, Vol. 16, p. 2974.
(*d*) Def. Ex. 271, Vol. 19, p. 640–1.

of the state in which a proposed pipe line is to be laid (*a*). Hence it became necessary, as the pipe line system crossed the state lines, either to acquire private rights of way or else to organize a new corporation and condemn a right of way. In some instances, apparently, private rights of way were acquired for a certain distance, and then a new corporation was organized. Thus, in course of time, not less than nine corporations have been necessarily organized to construct and operate common carrier pipe lines in different states; yet, with the exceptions noted, all of these pipe lines were paid for out of funds belonging mediately or immediately to the same group of people and have always been as much parts of one great structure as are the bones of the human body (*b*). It is a mere incident of our peculiar National polity that all of these pipe lines were not constructed by one corporation chartered by a single state or by the National Government. They were not built to compete and never did compete. Moreover, to a very large extent, these separate pipe lines are not parallel but are connected with each other end to end, like lengths in a water main, so that they cannot compete (*c*). Collectively they form a single unified means for transportation of the raw material to the Defendants' refineries. Of course, having been organized under general laws, they are subject to the obligations of a common carrier; but this, we submit, does not make them separate competitive entities which with reason or justice can be set apart and compelled to do business separately.

3. Down to 1886, all the common carrier lines owned by the Standard were vested in the *National Transit Co.* In consequence of the development of the Lima-Indiana field, the *Buckeye Pipe Line Co.* (1886) and the *Indiana Pipe Line Co.* (1891) were organized to hold and extend pipe lines in Ohio and Indiana respectively. Similarly, the *Eureka Pipe Line Co.* in West Virginia (1890), the *New York Transit Co.* (1892) in New York, and the *Cumberland Pipe Line Co.* (1901) in Kentucky, were organized to hold and build pipe lines

---

(*a*) N. Y., Laws 1878, Ch. 203; Penn., Laws 1883, Act 54; Ohio, Laws 1868, p. 109; Indiana, Laws 1891, p. 301.
(*b*) Def. Ex. 271, Vol. 19, p. 640–1.
(*c*) Map, Pet. Ex. 990, not printed.

in their respective states, in consequence of the discovery of crude oil therein and to secure its transportation to desired points. Meanwhile, the National Transit Co. constructed or projected additional pipe lines in several different parts of Pennsylvania, which for convenience were vested in the *Southwest Penn. Pipe Lines* (1885), the *Northern Pine Line Co.* (1889) and the *Southern Pipe Line Co.* (1890), all organized under the Laws of Pennsylvania (*a*).

4. As already stated, all these pipe line companies, except the National Transit Co. itself, which has a special charter, were organized under general laws. None of the charters are in any way exclusive. There is nothing to prevent any group of individuals from organizing a new pipe line company in any one of the states in question, condemning a right of way and laying a pipe line parallel to any one of the Standard pipe lines, or running to any desired point. Throughout this case, Counsel for the Government have inveighed against what they call the Standard's monopolistic " control " of the pipe lines, as if these were navigable rivers or public highways. This charge is unreasonable. The Standard Oil Co. " controls " its common carrier pipe lines, *because it paid for the rights of way, built the lines with its own money, and has ever since owned them.*

5. *Crescent Pipe Line Company.* All the stock of this company was purchased outright for cash in the year 1895 (*b*). It then owned and still owns a trunk line running from a point near Pittsburg to Marcus Hook. It was built by the Mellens of Pittsburg to conduct crude oil to their own refinery at Marcus Hook, and at the time of the purchase it was not transporting oil for any other person or refinery and never had done so (*c*). The line is included *entirely within the State of Pennsylvania* (*d*). The charges made by Counsel for the Government in regard to the purchase of this Company are groundless. An Act of the Legislature of Pennsylvania passed in 1895 repealed a statute of that State which had forbidden the consolidation

---

(*a*) Def. Ex. 271, Vol. 19, p. 640-1; Def. Ex. 272, Vol. 19, p. 648.
(*b*) Appendix, I, p. 262.
(*c*) Archbold, Vol. 17, p. 3328.
(*d*) Pet. Ex. 356 F, Vol. 8, p. 878.

of pipe line companies. The Act was passed only after a very full hearing in the Legislature, and after a public hearing and careful consideration by the Governor of Pennsylvania (See his memorandum at the foot of the Act) (*a*).

Upon receiving the Governor's approval, *the Act in question became the law of the land*, and the purchase of the stock of the Crescent Pipe Line Co. by the National Transit Co. which followed was a transaction sanctioned by the Statutes, and encouraged by the policy, of Pennsylvania.

6. All other existing pipe lines or portions thereof which were originally derived from any independent source are now vested in the National Transit Co. (*b*). Except the Crescent, and the Mellen system of gathering lines purchased at the same time as the Crescent, all the pipe lines which were ever acquired were inconsiderable in extent, were all acquired prior to the year 1890 and nearly all prior to 1882. With the exception of the Mellen gathering lines, they were also *all entirely included within the State of Pennsylvania* (*ante* p. 30, 61).

FIFTH: THE DEFENDANT PIPE LINE COMPANIES, WHICH ARE COMMON CARRIERS, HAVE FULLY PERFORMED ALL THE DUTIES WHICH THEY ARE OR EVER WERE LIABLE TO PERFORM.

I. Such companies are the following:

Buckeye Pipe Line Co.
Eureka Pipe Line Co.
Indiana Pipe Line Co.
National Transit Co.
Cumberland Pipe Line Co.
Southwest Pennsylvania Pipe Lines.
Northern Pipe Line Co.
Crescent Pipe Line Co.
New York Transit Co.
Southern Pipe Line Co.

As to the last four companies, no interstate shipments originate with any of them. As to all interstate shipments passing through their lines, these four companies have respectively filed with the Interstate Commerce Commission concurrences in the various schedules of rates

---

(*a*) Laws of Pa. 1895, p. 15.
(*b*) Record, Vol. 19, p. 640-1.

filed by the companies upon whose lines such interstate shipments originate. All the remaining companies above referred to duly filed all tariffs required by the Interstate Commerce law, in or about the month of August, 1906, or shortly thereafter, which must be presumed to have been satisfactory to the Interstate Commerce Commission, as there is no proof of any objection being raised to any of them. A condensed table of the tariffs so filed or concurred in by such companies and the full text of several of such tariffs are in evidence (*a*).

II. There is no proof in the record that the rates stated in the tariffs as filed are in themselves excessive or unreasonable. These rates are the same as the rates prevailing for a long period prior to the Act of 1906, and everything that has heretofore been said on the subject of charges by the pipe line is applicable to them. *There is no proof that either independent shippers or the Inter-state Commerce Commission have raised any question as to their reasonableness, and the fact is that no one has done so.* Nor have any of the defendants ever been called upon to transport any oil under any of these tariffs (*b*).

III. The Government complains because the defendant pipe line companies have not filed tariffs to a greater number of points where independent refineries exist.

1. The summary of pipe line tariffs in evidence mentions as receiving points all points at which oil is collected for shipment by the common carrier companies to points of destination named in the various tariffs from the respective producing fields tributary to the lines of the respective common carrier companies, and such points are all the possible points of origin of interstate shipments by such companies in the respective fields. The tariffs also name as points of destination to which oil will be transported for any shipper, including independents, the terminals of the lines and all intermediate points at which interstate shipments of oil are now or were prior to the filing of such tariffs delivered to any Standard Oil interest. (*c*)

2. Thus the tariffs filed by the defendant common carrier lines strictly conform (in respect to the points of de-

---

(*a*) Pet. Exs. 39–49, Vol. 7, p. 124–150.
(*b*) Record, Vol. 17, p. 3613.
(*c*) Pet. Exs. 39–49, Vol. 7, p. 124–149.

livery) to the requirements of the Interstate Commerce Act as amended 1906. There has been no decision upon the pipe line clause in the Hepburn Act of 1906, but it is well settled that railroads are not required to establish new stations and of course not to file tariffs to any such, unless there be great public demand for the same or unless the Interstate Commerce Commission shall so direct.

Bridge Co. v. L. & N. R. R. Co., 37 Fed., 567, at p. 661;
Northern Pa. R. R. Co. v. Washington Territory, 142 U. S., 492, 499;
Jones v. Railroad Co., 12 I. C. C., 144 (May, 1907).

There is not a word of evidence to show a demand for a new point of delivery on the pipe lines from independents, either before or since the filing of the tariffs, nor that the Interstate Commerce Commission has ever made any order in that behalf, and such is not the case.

3. Among the points of destination designated in the said tariffs are Philadelphia and Marcus Hook (near Philadelphia), where there are not less than six independent refineries, exclusive of that of the Pure Oil Co.; Pittsburg, at which and in the immediate vicinity are not less than nine competing refineries; and Cleveland, at which is the refinery of the National Refining Co. (*a*).

4. In addition to tariff points, the Defendants' pipe lines make deliveries to independent refineries at Titusville and Bradford, Pennsylvania, and, apparently, at Toledo, Ohio; and to the refineries, sixteen in number, named in the Petition (Vol. A, p. 54), situated at various points in Pennsylvania and at Marietta, Ohio. All of these, however, involve only intrastate transportation, and, therefore, do not call for the filing of tariffs, though regular rates are maintained (*b*).

5. The only oil fields of importance reached by the common carrier lines are the Appalachian and Lima-Indiana fields. So far as the record shows, none of the independent refiners except those in Northern Ohio use oil derived from the Lima-

---

(*a*) Pet. Exs. 39-49, Vol. 7, p. 124-149; Def, Ex. 277, Vol. 19, p. 662.
(*b*) Record, Vol. 1, p. 352-3; Record, Vol. 1, p, 176.

Indiana field; and it is not probable that any do so, since Lima crude is a refractory, sulphur-bearing oil, requiring a special process and equipment for its refining (*ante*, p. 91). There would thus be no possible object in offering to transport oil from the Lima field to Pennsylvania refiners. As to independent refiners in Northern Ohio, there is no proof that any of them have asked for the delivery to them of Lima or any other crude. Deliveries of Appalachian crude could not in general be made to them, because the Standard's trunk pipe lines only work in one general direction, to wit, from West to East, and, in the nature of things, cannot do otherwise (*a*).

SIXTH: THE PIPE LINE TARIFFS FILED IN OR SINCE AUGUST, 1906, DO NOT IMPOSE UPON INDEPENDENT SHIPPERS UNREASONABLE CONDITIONS AS TO QUANTITY.

I. The pipe line tariffs in evidence (*b*) in substantially identical language show the various minimum amounts which will be accepted under the various tariffs for transportation. A single example will suffice. In Petitioner's Exhibit 45 (*c*), being a tariff of the Indiana Pipe Line Co. in connection with others for transportation from Griffiths, Indiana, to Unionville, New York, the provisions are as follows (italics ours):

> "SECOND. It will forward such crude petroleum, when there has been tendered to it by a shipper *individually or by him and others*, a quantity of the same kind and quality of crude petroleum, amounting in the aggregate to not less than 300,000 barrels, all of which shall be consigned for delivery to the same delivery point."
>
> * * * * * * *
>
> "FOURTH. Orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, *in connection with orders from other shippers*, for the same kind and quality of petroleum shall amount in the aggregate to three hundred thousand (300,000) barrels, or more, consigned to the same point of delivery; and subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received."

(*a*) Towl, Vol. 20, p. 310–324.
(*b*) Pet. Exs. 39–49, Vol. 7, p. 124–150.
(*c*) Record, Vol. 7, p. 140.

II. *Evidence as to the amounts of the minimum requirements under these tariffs is pertinent only as bearing on the charge of monopolization through the use of pipe lines.*

So far as this case is concerned, the charge is fully answered by the uncontradicted proof that the minimum requirements were fixed in good faith by experts and practical men acquainted with all the conditions and in the light of their previous experience, the amounts being the same which for several years had been in force against all comers, including the Standard Oil shippers themselves; and transportation in the regular course of business of the different grades of oil through Defendants' complicated system of pipe lines having theretofore produced such heavy losses through mixture as to necessitate large minimum requirements. Nor, apart from this suit, has there ever been any complaint from any person or from the Interstate Commerce Commission concerning the amounts of the tariff requirements.

III. These minimum requirements were fixed in good faith and were the smallest possible under the conditions.

1. Mr. Forrest M. Towl, Civil Engineer, graduate of Cornell University, for twenty-two years connected as Engineer with the Standard Oil pipe line interests, testified (*a*) most convincingly to this effect.

2. The tariffs do not require these minimum amounts to be tendered by a single shipper, but only that his orders "*in connection with orders from other shippers*" shall aggregate the minimum requirement (*ante*, p. 121). The Prairie Oil and Gas Co., the Ohio Oil Co. and P. S. Trainor are the principal and practically the only Standard shippers through the pipe lines (*b*). The defendant pipe line companies who are common carriers have construed the provision concerning "other shippers" in the tariff to include "every one that ships over the line; Ohio Oil Co., Prairie Oil and Gas Co. and Trainor and any one else that might choose to offer any oil," and to mean that, if any independent shipper should furnish an amount of crude petroleum of the same kind and quality as that which had been tendered by one or some of the Standard Oil shippers

---

(*a*) Record, Vol. 17, p. 3603–4. (*b*) Record, Vol. 17, p. 3603.

and if his tender and theirs together made up the 300,000 barrels, or other minimum, all consigned to the same point of delivery, the pipe lines were bound to, and would, take his shipment (*a*).

3. For some years prior to the filing of the tariffs, substantially the same minimum requirements as to size of shipments had been imposed upon the Standard Oil shippers and had been rarely departed from, and, since the filing of the tariffs, the minimum requirements have been rigidly observed by the Standard Oil shippers (*b*). The testimony to this effect is amply corroborated by the exhibits offered by the Government, being statements showing batches of oil pumped from the various points named in the tariffs and from other points (*c*).

SEVENTH: CONTAMINATION ARISING FROM MOVING BATCHES OF CRUDE OIL OF DIFFERENT GRAVITIES IN THE SAME PIPE LINE IS THE PRINCIPAL CAUSE NECESSITATING LARGE SHIPMENTS.

I. Make-up and operation of a pipe line in actual practice.

1. *What a pipe line consists of.* Mr. Towl testified (*d*) in substance as follows:

In practice pipe lines are divided into sections, each of which contains a number of parallel pipes. These very generally vary in diameter, and the number of pipes in different sections varies. This is due to the fact that the pipe line systems grow as the demands upon them increase,—pipes of different calibre being added to meet present needs. Pipe lines run across country, up-hill and down, and less capacity is required on down grades than on levels. At points from 30 to 50 miles apart, pumping stations are provided, which have to be located near water and fuel. In operating a pipe line, it is essential that a regular flow of oil throughout the system be maintained. Oil is forced through the pipes by pushing it ahead with other oil.

Mr. Page testified to the same effect (*e*).

(*a*) Record Vol. 17, p. 3605, 3617–18.
(*b*) Record, Vol. 17, p. 3604–5; 3609; Vol. 16, p. 3016; Vol. 20, p. 822.
(*c*) Pet. Exs. 992 A, B, C, 993–1001, Vol. 21, p. 148–164; Record, Vol. 20, p. 343–4; Vol. 20, p. 337–9.
(*d*) Record, Vol. 17, p. 3598–9.
(*e*) Record, Vol. 16, p. 2921.

2. Mixture causing contamination and consequent loss in market value results chiefly from differences in the so-called " gravity " of the two oils (*a*). The " gravity " of oil means the weight of the oil compared to water, so that the lighter the oil the higher its gravity. Thus—oil of 44° gravity is much lighter in weight than oil of 33° gravity (*b*). High gravity oil has a much higher market value than low gravity oil, on account of its superiority for refining purposes (*c*). Oil moves at different rates of speed in pipes of different and even of the same calibres, and when the parallel pipes composing a section of the pipe line come together at some junction point, the head of the column in the larger pipe will, other things being equal, be a long distance ahead of the column in the smaller pipe. Many different kinds of crude oil are pumped through the same pipe line. High grade oil, which is the more valuable, will in many—if not most—instances be preceded and followed by low gravity oils of less value. At the junctions, the oil of one gravity from the larger pipe will flow out and mix with a considerable amount of oil of another gravity from the smaller pipe; and the same process is repeated at each junction point; with the result that, in the course of hundreds of miles of transit, a large amount of mixture will take place at each end of the column of high gravity oil, with a corresponding loss in commercial value (*d*).

3. It is obvious that the larger the batches of oil, the less serious becomes the loss by mixture; for this loss is substantially a fixed quantity for a given distance, and it will form a smaller percentage of a large batch than of a small one. The defendant pipe line companies, therefore, long ago adopted the practice of shipping different kinds of crude oil in very large batches. To determine the amount of this mixture and to demonstrate the necessity of large minimum requirements in the tariffs, a series of tests on a large scale were made on the Southern Pipe Line from Morgantown, West Va., to Millway, Pa., a distance of about 200 miles—in the Autumn of 1907—which were fully explained by Mr. Vandergrift, Superintendent in charge, (*e*) whose testimony is quite uncontradicted.

(*a*) Record, Vol. 17, p. 3600.
(*b*) Record, Vol. 16, p. 2939-40.
(*c*) Record, Vol. 20, p. 303.
(*d*) Record, Vol. 17, p. 3600-01.
(*e*) Record, Vol. 16, p. 2977-92.

Not less than six different grades of crude oil, differing widely in their gravity and market value, have to be transported in practice over this line. The results of the tests showed that in transporting Pennsylvania high grade oil in batches of from about 80,000 to 155,000 barrels, preceded and followed by low grade oil, through the line and over the distance mentioned, there was a loss of high grade oil, by mixture with low grade oil, averaging for each of the five tests, about 15,000 barrels (*a*). The mixture of high and low grade oil has apparently no higher value than the ordinary low grade oil (*d*). Mr. Tarbell of the Pure Oil Co., a Government witness, testified that the difference between the value of Pennsylvania grade oil and that of low grade Western oil was 83c. per barrel at his refinery (*b*). Accepting these figures, the loss of 15,000 barrels of high grade oil represented a loss in market value, on the average, in a single shipment of Pennsylvania grade oil through the Southern Pipe Line, from Morgantown to Millway, of about $12,450. The minimum shipment over the Southern Pipe Line required by the tariffs being 75,000 barrels, it thus appears that the average amount of loss was about one-fifth of this minimum. Obviously the minimum was none too large.

4. The results of the practical tests above described are fully corroborated by records produced by Mr. Pilkington, in response to Government subpœna, which records show that on 32 shipments of Pennsylvania grade oil pumped in the regular course of business from Morgantown by way of Millway to Centerbridge, there were losses ranging from 6,705 barrels to 19,390 barrels on a single shipment,—an average for the entire number of shipments of about 12,000 barrels of high grade oil lost in transit by mixture with low grade oils (*c*).

5. The larger minimum amounts named in the tariffs are for transportation over correspondingly greater distances. Thus the minimum requirement of 300,000 barrels in the tariff from Griffith, Indiana, to Unionville, New York (*ante*, p. 121), is for transportation over a distance of from 500 to 600 miles, in which distance the amount of loss by mixture

---

(*a*) Record, Vol. 16, p. 2979, 2984.
(*b*) Record, Vol. 20, p. 303.
(*c*) Record, Vol. 20, p. 346-9, 353-6.
(*d*) Record, Vol. 16, p. 3510.

would be correspondingly greater than the foregoing figures. Hence, the larger minimum requirement is necessary. It thus appears that the amounts named in the tariffs of the defendant pipe line companies, as the minimum quantities of a particular grade of oil which will be accepted for shipment, are the smallest which are practicable in view of the mixture and loss resulting in the manner just described.

However, as already shown *(ante,* p. 122), the amounts of the minimum requirements for shipment are of very little consequence to the independent shipper, since he can bring any small quantity of a particular crude to the pipe line to be transported and have the same forwarded with a larger amount belonging to some Standard shipper, the two together making up the minimum shipment and thus conforming to the tariff requirements.

EIGHTH : COMPETITORS' PIPE LINES.

As already shown *(ante,* p. 105), the principal competitors of the Standard either own pipe lines extending from one or other of the principal oil fields or else they are affiliated with other refiners who own such pipe lines. In every such case, the independent pipe lines have been located with reference to the refineries of the pipe line owners, as has been the case with the Standard's pipe lines. Thus, the United States Pipe Line, owned by the Pure Oil Co., runs from the Pennsylvania Field to the refinery of its owner at Marcus Hook, near Philadelphia; the pipe lines of the Gulf Refining Co. and of the Texas Co. run from the Mid-Continent Field to the refineries of those companies in Texas, and are used chiefly to carry crude oil to those refineries. The same is true of the pipe lines of the independent California refiners.

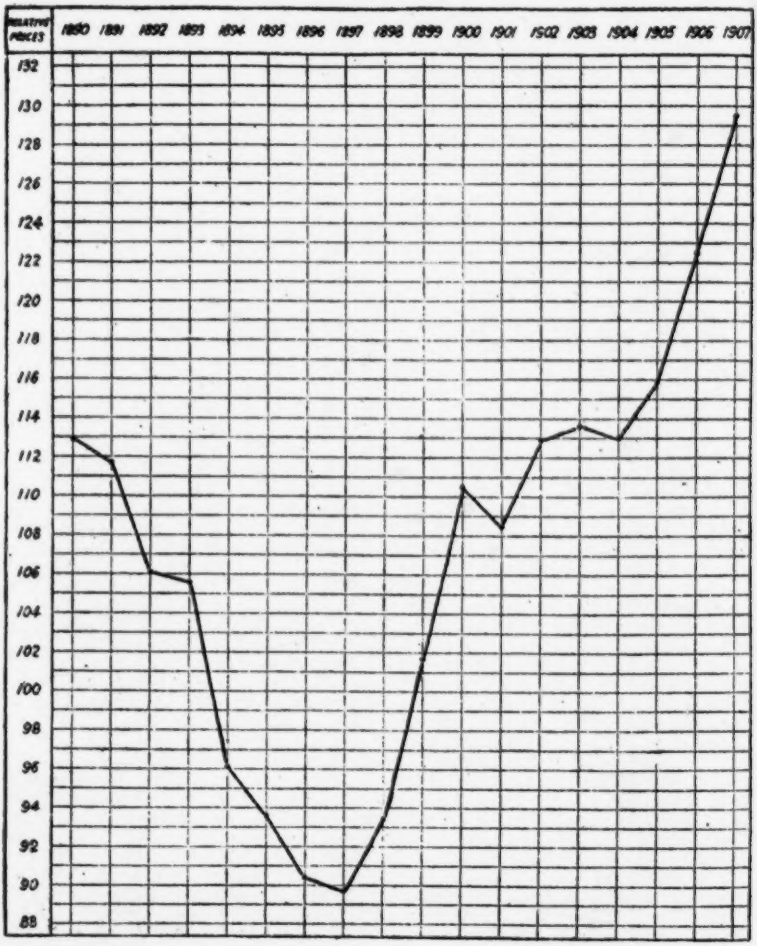
Nor, so far as appears, are the batches shipped by the independent pipe lines proportionately less than those required on the Standard's pipe lines. Mr. Messner, a Government witness, testified that, over the United States Pipe Line, through the single pipe used for transporting refined oil, the ordinary shipment was from 25,000 to 50,000 barrels (*a*). This is a larger requirement than that of 75,000 barrels over the Standard's Southern Pipe Line, when the different capacity of the two lines is considered.

(*a*) Record, Vol. 20, p. 262.

DEFENDANTS' EXHIBIT 294.

RELATIVE PRICES OF ALL COMMODITIES, 1890 TO 1907.

[Average price for 1890 to 1899=100.]



CHAPTER XIV.

PRICES.

FIRST: The records shows no unreasonable advance in defendants' average prices.

I. The only evidence in the record relating to the course of Defendants' average domestic prices for refined oil or other petroleum products is confined to the period from 1895 to 1906, both inclusive (*a*). This period was one of very great changes in the prices of almost all commodities. These changes are shown graphically upon Defts' Ex. 294, facing this page, which is a copy of a chart prepared and published, with the tables of statistics upon which it is based, by the Bureau of Labor of the Federal Government in March, 1908. No question is raised by the Government as to the authenticity or correctness of the chart. Joseph French Johnson, Professor of Political Economy, and Dean of the School of Commerce, in New York University, called as an expert witness on behalf of the Defendants, explained the chart substantially as follows (*b*):

The chart is entitled "Relative Prices of all Commodities, 1890 to 1907," and is intended to show the changes in the general level of wholesale prices in the United States between those years. The term "relative prices," sometimes also called "index numbers," means an average of prices reduced to a decimal basis. "Relative prices" or "index numbers" are obtained in the case of each commodity by taking its actual average price for any certain year and then comparing that price with the average prices of the same commodity for other years. This comparison shows the ratio of advance or decline in that commodity, which ratio is expressed, not in terms of money, but in percentages of an arbitrarily selected base or starting point having the assumed value of 100. These percentages are the so-called

---

(*a*) Record, Vol. 8, p. 905, 908-10; Def. Ex. 293-B, 293-C, Vol. 19, p. 693-4.

(*b*) Record, Vol. 17, p. 3556-7.

"relative prices". The Government's statisticians who computed the relative prices on which this chart is based, selected as their starting point, to be called 100, the average of all prices from 1890 to 1899. Following the method above stated, the Government obtained "relative prices" in the case of 258 commodities. The relative prices of the 258 commodities for the same year are added together and divided by 258, and the result is taken as the average relative price of all the commodities collectively. These commodities cover raw materials, farm products and manufactured articles and are fairly representative of the whole range of commodities.

This method of estimating the general trend of prices of all commodities by "relative prices" or "index numbers" and by charts constructed like the Government chart, page 127, is the method approved by economists generally for comparing prices over a period of years (*a*).

The correctness of the foregoing testimony of Prof. Johnson, as well as of the theory of advancing prices explained by him, is admitted by the Government (*b*).

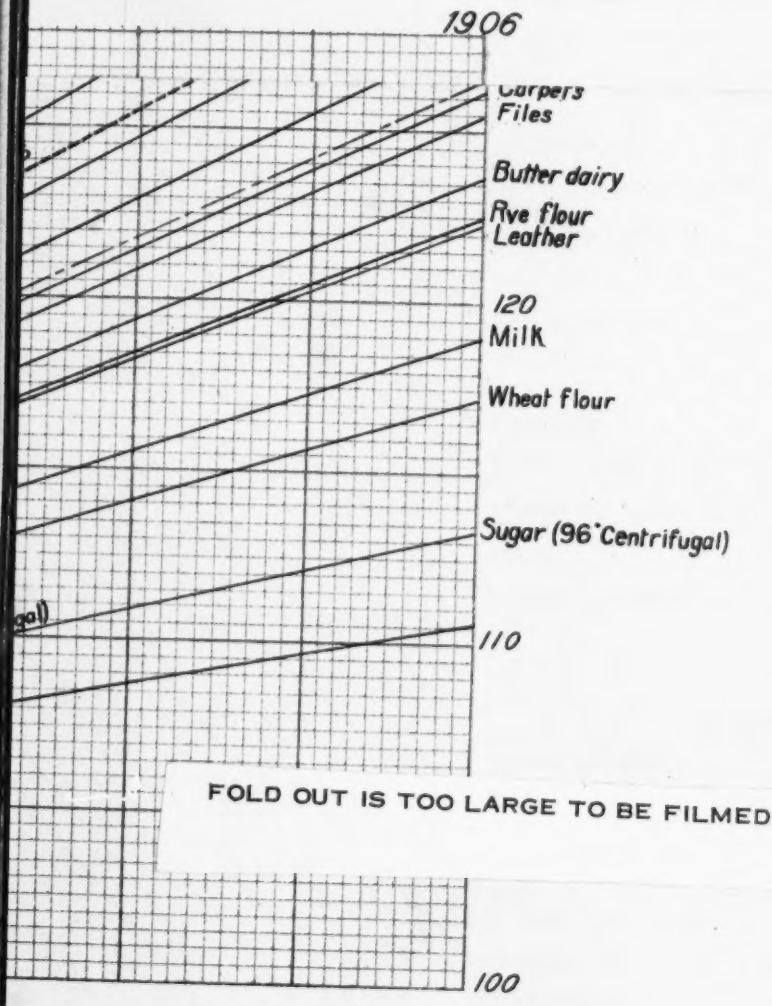
II. Compared with many of the more important of the 258 commodities which form the basis of the Government chart, the advance in Defendants' prices, particularly on refined oil, from 1895 to 1906, or indeed in any intervening year, has been very small.

1. Defendant's Exhibit 296 (*c*), facing this page, represents the prices for the years 1895 and 1906 only of water white oil and of about 30 other commodities, which are obviously among the most important. On this chart, the price in 1895 of each commodity is assumed to be 100, and the price in 1906 is indicated on the right-hand margin by adding to 100 the percentage of the increase for the particular commodity up to 1906. The price of water white oil in 1906 was only 11 per cent. higher than it was in 1895, and it was in 1906 relatively the lowest of all the commodities shown on the exhibit. The heavy dotted red line represents the position of the average

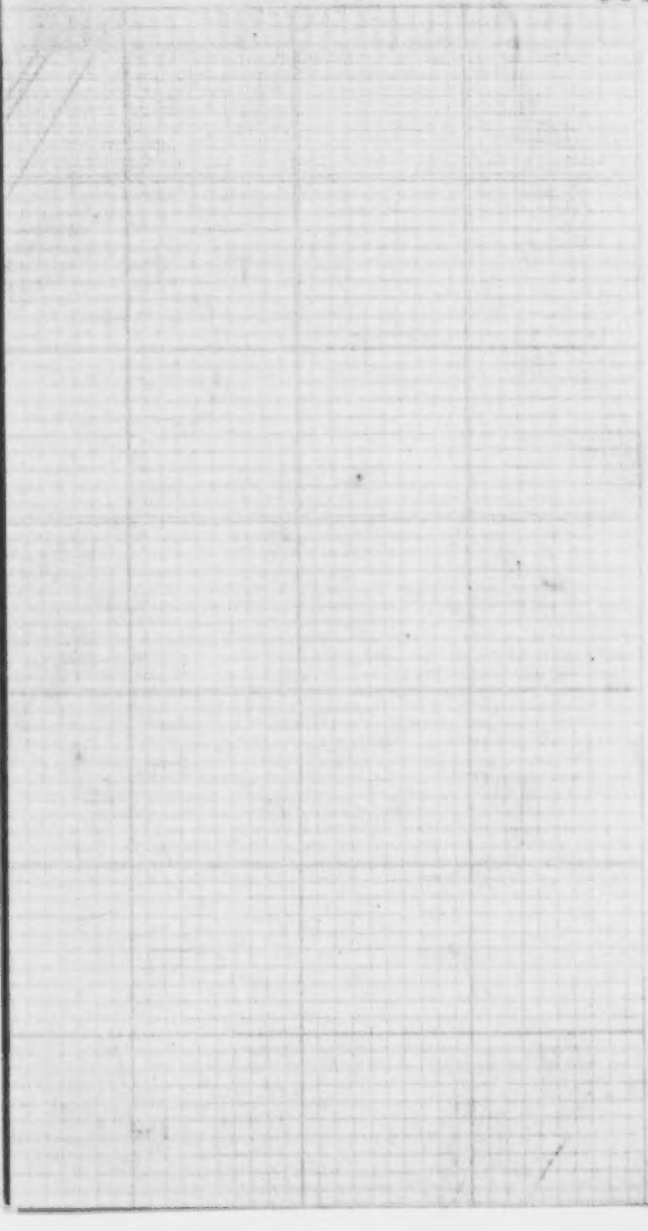
---

(*a*) Record, Vol. 17, p. 3560.
(*b*) Record, Vol. 20, p. 253–4, 467.
(*c*) Record, Vol. 19, p. 697.

s to oil, are taken
or the Wages line



FOLD OUT IS TOO LARGE TO BE FILMED


1895

price of all commodities in 1906 (compared with 1895), taken from the Government's chart (*ante*, p. 127). The small dotted red line shows the extent of the rise in average wages (*a*).

As this chart shows only prices in 1895 and 1906, a further series of charts were put in evidence by Defendants (*b*), which show the course of relative prices in the intermediate years of refined oil and of the 30 other commodities on the chart (*ante*, p. 128), taking the same by groups. From these charts, it appears clearly that the prices of the 30 other commodities fluctuated in the main quite as widely and most of them rose at times as high above the average price of general commodities as did refined oil at its highest point, and some of them higher, thus showing that the selection of the commodities contained on this chart was a fair one.

2. Counsel for the Government, however, insist that the comparison of the changes in prices of commodities should be made by contrasting the average price of 1895–1898 with the average price of 1903–1906. This comparison is not fair, because, in the years 1897–1898, the price on refined oil was much below the general price of commodities in the same four years, so that the starting point for refined oil in the Government's comparison by the four year periods is different from that which obtains in the case of other commodities (*post*, p. 131). Nevertheless, when the four year comparison is made with many other of the 258 commodities upon which the Government chart (*ante*, p. 127) was based, refined oil does not suffer. Compared thus with fifty other of the most important commodities, the advance in the prices of water white oil was the smallest (*c*).

3. To meet Defendant's proof on this point, the Government on rebuttal called Mr. E. D. Durand, who offered several exhibits consisting of lists of commodities, in many of which the average prices for the four years 1895–1898, as compared with those for the four years 1903–1906, appear to show a less percentage of advance than do the prices of water white oil.

(*a*) Def. Ex. 295, Vol. 19, p. 696.
(*b*) Record, Vol. 19, p. 705–17.
(*c*) Record, Vol. 19, p. 896–L.

(A) Pet. Ex. 981 (*a*), comprises the commodities shown on the Defendant's chart (*b*) *(ante*, p. 128). Of thirty commodities on the list, eight show a higher rate of increase than does water white oil, and six others show about the same increase. In the case of almost every one of the remaining commodities, however, a four year period can be picked, in which the average price shows as great an increase, as compared with the average price for the lowest four year period of the same commodity, as is shown in reference to water white oil by Pet. Ex. 981 (*c*). Hence this exhibit proves nothing.

(B) Pet. Ex. 982 (*d*) purports to be a list of commodities whose increases in price are all lower than those of refined oil, measured by the four year period method. Defendants impeach the fairness of this list and point to the relative unimportance of many of the commodities on it: For example *wood screws, one inch long, number 10, flat head;* common glassware pitchers, half-gallon size; *salt mackerel, large size, number 3s; American quinine.* Each of the commodities in the list is of relatively limited sale. It is safe to say that all them together, other than refined oil, do not weigh as much in the commerce of the country as the single item of corn, No. 2, which showed an increase of 57.91 per cent., or cotton, which showed an increase of 54.87 per cent (*e*). The increase in water white oil, measured by the four year periods, was only 37.87 per cent. (*f*).

(C) Pet. Ex. 983 (*g*), which is stated by Mr. Durand to represent articles which he considers most important, shows thirty-six commodities, of which eight of the most important show greater percentages of increase than refined oil, to wit, corn, cotton, coal, hogs, potatoes, pig-iron, common brick, quartered white oak. Many of the commodities which show less percentages of in-

---

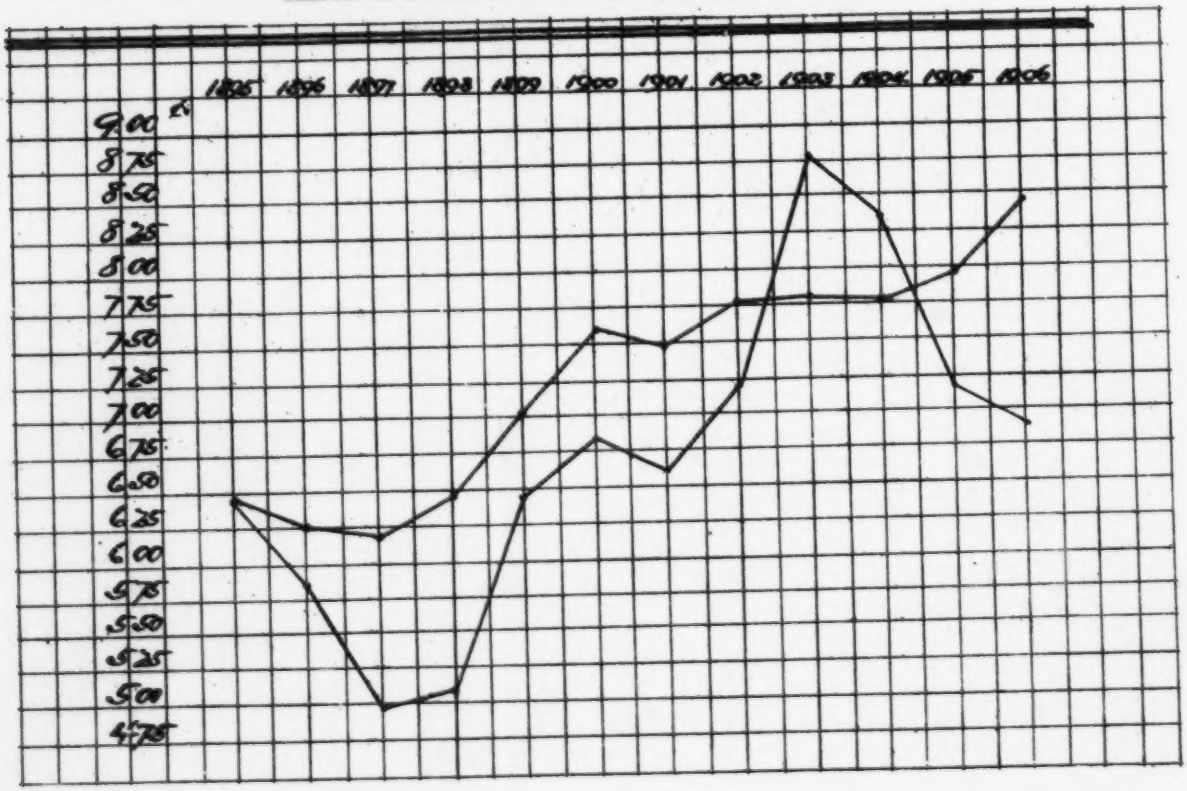
(*a*) Record, Vol. 21, p. 140.
(*b*) Def. Ex., 296, Vol. 19, p. 697.
(*c*) Record, Vol. 19, p. 705-717.
(*d*) Record, Vol. 21, p. 141.
(*e*) Record, Vol. 21, p. 142.
(*f*) Record, Vol. 21, p. 140, 142.
(*g*) Record, Vol. 21, p. 142.

DEFENDANTS' EXHIBIT 900.

WATER WHITE OIL PRICES.

[Prices in cents per gallon.]

Red ink line shows how Water White prices would have moved if they had followed the average changes in prices of all commodities.
Black ink line shows actual Water White prices, less marketing cost and freight.



crease on the four year comparison than does refined oil are relatively unimportant, for example: *common glassware tumblers, limited to one-third pint size; smoking tobacco, Seal of North Carolina only; cut nails, limited to eight penny size, etc.*

IV. *The fairest comparison in respect to variation in prices is that between the course of prices of general commodities in the entire period under consideration with the course of the average prices of water white oil for the same entire period. By this comparison, the Defendants are willing to be adjudged.*

1. This comparison is shown graphically by the chart Def. Ex. 298, facing this page (*a*) the accuracy of which is not questioned, in which the red line shows how the average water white prices would have changed if they had followed the average changes in the prices of all commodities. The black line on the chart shows the actual course of the average water white prices from 1895 to 1906. From this, it appears that, between 1895 and 1898, refined oil prices went very much lower than did general commodities, reaching 4.98 cents in 1897, and being at all times in the twelve years well below what they would have been had they followed the course of general commodities, except for about two years, 1903 and 1904, when they rose somewhat higher than general commodities, dropping, however, quickly, so that, in 1905 and 1906, they were far below what they would have been had they followed the course of general prices. This fact is also clearly established by the tables (*b*) from which Defendants' Exhibit 298 is constructed.

(*a*) Record, Vol. 19, p. 699.
(*b*) Def. Ex. 299, Vol. 19, p. 699.

2. The correctness of the principles upon which the chart, Def. Ex. 298 (*ante*, p. 131) is constructed is shown by the fact that the Government in rebuttal introduced a similar chart to indicate the course of combined prices of oil and naphtha (*a*), which most strikingly agrees with the chart Defendants' Exhibit 298. It is not admitted that there is any propriety in combining the prices of commodities like oil and naphtha, which vary very differently under altogether different conditions of supply and demand; but, assuming that there were such propriety, the Defendants would not suffer by the comparison, for it appears that the combined prices were far below the average prices of general commodities, except during the years 1903 and 1904.

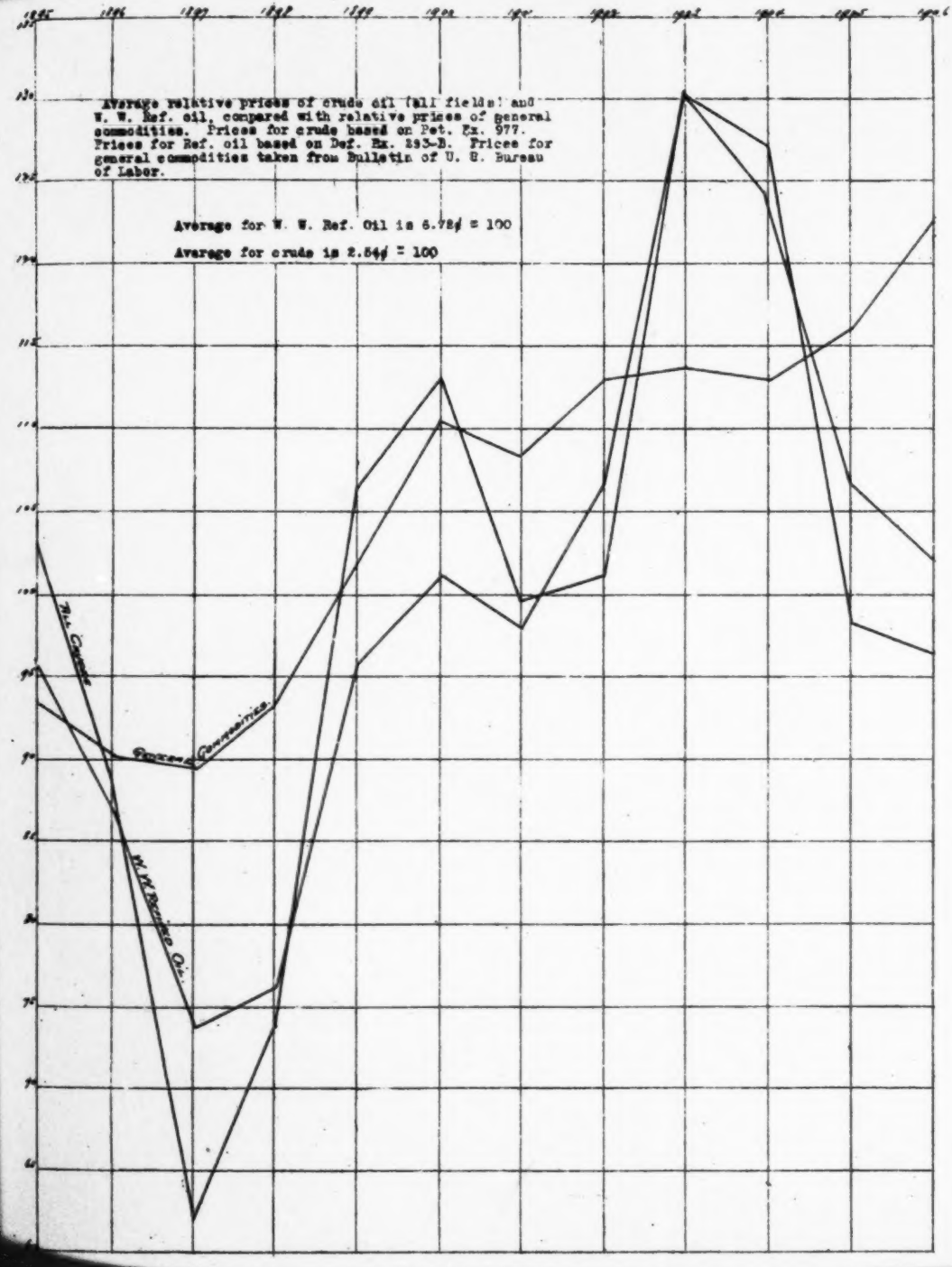
This plan of obtaining average prices for Defendants' different products has been carried so far by Mr. Durand that he attempts to combine the prices of refined oil, naphtha and paraffine wax. This is so unfair as to deserve no answer. Prices of paraffine depend upon totally different conditions of demand from a substantially different class of buyers than is the case with refined oil. Moreover the prices of paraffine introduced by Mr. Durand are not claimed to be those of Defendants; and in estimating prices per gallon of that product, he has used an arbitrary figure as the weight of a gallon for which he admits he has no authority (*b*).

V. *Comparison of the course of Defendants' average prices and of the prices of general commodities with the course of prices of crude oil during the period 1895–1906.*

1. Two charts are in evidence in which the comparison is made with Lima crude and Pennsylvania crude respectively (*c*). To these is added a new chart, facing this page, in which the

---

(*a*) Record, Vol. 21, p. 146.
(*b*) Record, Vol. 21, p. 143; Vol. 20, p. 252.
(*c*) Record, Vol. 19, p. 701–708.


Average relative prices of crude oil (all fields) and W. W. Ref. oil, compared with relative prices of general commodities. Prices for crude based on Pet. Ex. 977. Prices for Ref. oil based on Def. Ex. 893-B. Prices for general commodities taken from Bulletin of U. S. Bureau of Labor.
Average for W. W. Ref. Oil is 6.72¢ = 100
Average for crude is 2.84¢ = 100
All Crudes
General Commodities
W. W. Refined Oil

comparison is made with the average price of crude oil from all fields (*a*). All the data for this chart are taken from the record and together with the sources for the same are given in the note below.*

* This chart is based on the following table: Average relative prices of crude oil and W. W. Ref. oil (less marketing cost and freight), compared with relative prices of general commodities. Prices for crude based on Pet. Ex. 977. Prices for Ref. oil based on Def. Ex. 293-B. vol. 19, p. 693. Prices for general commodities taken from Bulletin of U. S. Bureau of Labor, as already shown on Defts'. Ex. 293-A, vol. 19, p. 693.

Year.	Crude Oil. Penna., Lima-Indiana, Mid-Continent and Illinois fields.		Refined Oil.		General Commodities.
	Actual Market Prices	Relative Prices	Actual Market Prices	Relative Prices	
1895	2.62c.	103.08	6.44c.	95.81	93.6
1896	2.26	88.92	5.85	87.03	90.4
1897	1.58	62.16	4.98	74.09	89.7
1898	1.88	73.97	5.14	76.47	93.4
1899	2.70	106.23	6.45	95.96	101.7
1900	2.87	112.92	6.82	101.46	110.5
1901	2.53	99.54	6.60	98.19	108.5
1902	2.57	101.11	7.19	106.97	113.9
1903	3.31	130.23	8.77	130.47	113.6
1904	3.23	127.08	8.36	124.37	113.0
1905	2.50	98.36	7.18	106.82	115.9
1906	2.45	96.39	6.88	102.36	122.5

Average for Ref. oil is 6.72c. = 100
Average for Crude is 2.54c. = 100

From this last chart, it appears that, in the earlier years of the period, 1895-1898, the price of crude took a sudden and heavy dip and was followed, though not quite so far, by the price of water white refined oil. After 1898, crude oil rose with comparative rapidity to a very high point. The price of refined oil also rose, but not to the same extreme as crude oil.

(*a*) Record, Vol. 21, p. 136.

Finally, when the prices of refined oil rose, during 1903 and 1904, higher than the course of general commodity prices, their rise was coincident with an extraordinarily high rise in the price of crude oil.

Two conclusions may be drawn from this showing. First, that the advances shown in the prices of Water White oil were in a large measure compelled by advances in the prices of the underlying raw material; secondly, that *the prices of the crude oils and of the finished product, namely, refined oil, were fluctuating in accordance with the ordinary laws of supply and demand, and not in accordance with any arbitrary action on the part of the defendants.* Had the Defendants been able arbitrarily to control prices of crude oil, would they have allowed the prices to take the extreme dip that they did in 1896–1898? Or, having reduced the crude prices so low, would they have allowed them to rise so rapidly and so high that in 1900 the average price of crude was almost, and in 1903–1904 was quite, twice as much as it was in 1897? On the other hand, if the Defendants, failing control over the prices of crude, had yet had arbitrary control over the prices of refined oil, would they have allowed these prices to fall as happened in the years 1896–1898 and again from the high points which they reached in 1903–1904 to the comparatively low points attained in 1905–1906? It is simply incredible that any dealers, if they had control over prices, would ever have permitted such astounding fluctuations as are shown on this chart and on the corresponding charts in evidence (*a*).

2. Moreover, it appears that the average price of crude in 1895–1898 was 2.085 cents per gallon, and in 1903–1906 2.872 cents per gallon; an increase of .787 cents, or 37.74 per cent. over 1895 (*b*). The per cent. of increase in the average prices

---

(a) Def. Ex. 800, 802, Record, Vol, 19, p. 701, 703.
(b) Record, Vol. 21, p. 136.

of refined oil for the same four year periods was 37.87 per cent. (*a*). In other words, the percentage of increase in the case of refined oil was, as nearly as possible, the same as in the case of crude oil.

VI. *There was no real net increase in Defendants' prices for refined oil between 1895 and 1906, because of the decline in the purchasing value of money during that period.*

1. It is hardly necessary to argue to this Court that the great rise in average prices of general commodities, already referred to, indicates and is synonymous with a corresponding lessening in the purchasing power of money, which depends upon the level of general prices. The higher general prices are, the less the dollar will buy of general commodities or, in the phrase of the economist, the less the "purchasing power" of money. When general prices fall, the dollar will buy more of general commodities; hence the "purchasing power" of money will be greater. Referring to the Government chart (*ante*, p. 127) it appears that prices rose between 1897 and 1907 from the point indicated by the relative price figures 89 to a similar point indicated by the figures 129, or about 44 per cent. This means that $1.44 in 1907 would buy no more of general commodities than could have been bought with one dollar (100 cents) in 1897; that is, the purchasing power of money during that period had declined in the same ratio as 144 to 100, or about 31 per cent. In other words, in 1897, $690 had the same purchasing power with respect to general commodities as $1,000 had in 1907 (*b*).

Bearing these facts in mind, in order to make a just comparison between the prices charged by the Defendants for oil in 1895 and in the subsequent years, it is necessary to reduce all the prices to the common basis of the year 1895; that is, to express them in money having the purchasing value of that year. How this is done, may be seen by referring to the following table:

(*a*) Record, Vol. 21, p. 142.
(*b*) Record, Vol. 17, pp. 3568–70.

Relative prices all Commodities per Government Chart (ante, p. 127), and percentages of increase in prices over 1895; and average prices received by Standard Oil Co. for all refined oil in domestic trade.

(From Def. Exs. 293A and 293B).

Year.	Relative prices all commodities.	Percentages of increase over 1895.	Average refinery price of all deliveries of W. W. oil. (Cents per gallon.)	Average profit of domestic marketing companies on illuminating oil in U. S. (Cents per gallon).	Total net price to dealers exclusive of marketing cost and freight. (Cents per gallon).
1895...	93.6	100.00%	5.24c	1.20c	6.44c
1896...	90.4	96.58	4.93	.92	5.85
1897...	89.7	95.83	4.02	.96	4.98
1898...	93.4	99.79	4.26	*a*.88	5.14
1899...	101.7	108.65	5.25	1.20	6.45
1900...	110.5	118.06	5 44	1.38	6.82
1901 ..	108.5	115.92	4.96	1.64	6.60
1902...	112.9	120.62	5.45	1.74	7.19
1903...	113.6	121.37	6.85	1.92	8.77
1904...	113.0	120.73	6.76	1.60	8.36
1905...	115.9	123.82	5.42	*b*1.76	7.18
1906...	122.5	130.88	5.38	*b*1.50	6.88

a. Includes United States and Canada. Excluding Canada does not change this average.

b. Not including the profits of the Waters-Pierce Oil Company.

The percentages of increase or decrease in the second column are obtained by comparing the relative prices for the different years with that for 1895. For example: The relative price for 1906, indicated by 122.5, as compared with 93.6, the relative price of 1895, is 30.88 per cent. higher than the latter, which, for the purposes of this comparison, is taken as 100 per cent. Obviously, the net price to dealers, exclusive of marketing cost and freight, is the fairest price for comparison, since it includes all profits and excludes the elements over which the Defendants have no control. The statistics in the last three columns of this table, when reduced to the basis of the money of 1895, are shown in Defendants' Exhibit 293–D, (*a*) as follows:

(*a*) Record, Vol. 19, p. 694.

Average prices received by Standard Oil Co. for all refined oil in domestic trade, 1895 to 1906, excluding marketing cost and freight; all prices reduced to 1895 basis.

(Cents per gallon.)

Year.	Average refinery price of all deliveries of W. W. oil reduced to 1895 basis.	Average profit of domestic marketing companies on illuminating oil in U. S. reduced to 1895 basis.	Total net price to dealers exclusive of marketing cost and freight reduced to 1895 basis.	Increase or decrease in reduced prices as compared with 1895.
1895...	5.24c.	1.20c.	6.44c.	
1896...	5.10	.95	6.05	.39c.*
1897...	4.19	1.00	5.19	1.25 *
1898...	4.27	.88	5.15	1.29 *
1899...	4.83	1.10	5.93	.51 *
1900...	4.61	1.17	5.78	.66 *
1901...	4.28	1.41	5.69	.75 *
1902...	4.52	1.44	5.96	.48 *
1903...	5.64	1.58	7.22	.78
1904...	5.60	1.32	6.92	.48
1905...	4.38	a1.42	5.80	.64 *
1906...	4.11	a1.15	5.26	1.18 *

a Not including the profits of the Waters-Pierce Oil Company.
Compiled from Exhibits 879, 396-A, 383, 299.
* means decrease.

What has been done has been to divide each of the items in the last three columns of the last preceding table by the corresponding decimals in the second column of that table, showing the percentages of increase in general prices over 1895. This process takes into account the change in the purchasing power of money and shows what the prices would have been if the purchasing power of money had remained as it was in 1895; or, in other words, reduces the prices to terms of money with the same purchasing power which money had in 1895. It appears that only in two years (1903–4) was there any increase in the real net prices of refined oil when reduced to the basis of 1895, while in all the other years the real net prices were less than in 1895. (a)

(a) Record, Vol. 17, p. 8570-1.

VII. Unable to break the force of the foregoing arguments, Counsel for the Government assert that 1895 was a year of unusually high prices for refined oil and therefore not a proper year for comparison.

As to refined oil prices after 1895, their course is shown in Defendants' charts. As to the domestic prices of refined oil prior to 1895, there is absolutely no evidence in the record. Everything urged in that behalf is pure hypothesis. Counsel for the Government read into the Record (*a*) what purported to be prices for export refined oil in barrels at New York, which prices, however, do not purport to be those of the Defendants nor is there any evidence as to what relation they bore to Defendants' prices, either export or domestic. Prof. Johnson's testimony concerning these assumed export prices cannot be construed as making any admission concerning Defendants' domestic prices, for he had no data before him to form any judgment which was more than a mere surmise.

VIII. But the Government claims that the Defendants' cost of production did not increase in the period from 1895 to 1906, and that therefore, the Defendants were not "justified" in raising their prices.

1. As to justification, this is beside the point. Defendants are charged by the Government with an unreasonable and exorbitant increase in their prices. It appears in fact that there was no increase in their net prices. What the Government's position amounts to, then, is that the actual prices for refined oil should have stood still, while all other prices were rising, including the prices of all commodities used in the manufacture of oil, and, chiefly, the price of labor. It is in evidence that general wages rose in the period in question about 30 per cent (*b*). The increase in the prices of crude oil has been fully shown. The increase in the prices of other commodities used in the oil business, such as coal, lumber and iron, has been very great since 1895 (*c*). It must be presumed, therefore, that Defendants' cost of production has increased. But suppose it were otherwise; there is no principle of law or of political economy which requires a manufacturer to give away a profit which he can make by economies in manufacture.

(*a*) Record, Vol. 17, p. 3582.
(*b*) Def. Ex. 295, Vol. 19, p. 696; Record, Vol. 17, p. 3561-2.
(*c*) Pet. Ex. 983, Vol. 21, p. 142.

SECOND: Variation in prices at different points in the United States, alleged to be due to the action of competition.

I. A comparison of prices at different points must be made, not by the prices themselves, but by margins of profits which were obtained, because not only differing freights and marketing costs, but also, to some extent, differing refinery prices, enter into the ultimate gross price which is charged by the marketing station to the dealer. The Government's real charge, therefore, under this head is that prices have at times been so fixed at some different marketing stations as to show a higher margin of profit where there was little or no competition, and lower margins of profit where there was active competition.

II. The extent and importance of the differences in margins of profit have been greatly exaggerated by the Government. Some difference is inevitable. The marketing cost at the different stations and the freight charges, when reduced to gallons, are expressed in irregular decimal parts of a cent (*a*). On the other hand, oil prices to the trade do not change by less than one-half a cent a gallon. Considered quantitatively, the gallonage of oil sold at margins unusually high or at a loss is very small. The following table shows the percentages of total tank wagon sales of water white oil in the United States (excluding Waters-Pierce Oil Company) in 1904, at different approximate margins of profit (*b*).

Approximate margins in cents per gallon.	Percentage sales.
Loss	4.89
1.00 and under	20.92
1.01 to 2.00 inc.	42.26
2.01 to 3.00 inc.	26.48
3.01 to 4.00 inc.	3.00
4.01 to 5.00 inc.	1.48
5.01 to 6.00 inc.	.43
6.01 to 7.00 inc.	.47
7.01 to 8.00 inc.	.07
	100.00

(*a*) Record, Vol. 8, p. 664; Vol. 10, p. 1624.
(*b*) Pet. Ex. 962, Vol. 21, p. 133.

These figures show that the percentage of total business done at a loss in 1904 was 4.89 per cent, and that the percentage done at margins above 3 cents aggregated only 5.45 per cent. About 90 per cent. of the sales were made at margins below three cents, and nearly 70 per cent. at margins of from one to three cents.

The comparatively few sales made at a loss or at a very low margin were so made, it is believed, in every instance, on account of the necessity of meeting cuts in prices made by competitors. (See Chapter on Unfair Competition, *post*, p. 170).

III. A considerable amount of difference in margins of profit being inevitable, within what limits may such differences be regarded as normal or accidental?

1. Various exhibits designed to show comparative prices have been put in evidence by the government. An examination of one will suffice. Pet. Ex. 391 (*a*) gives statistics as to prices and margins of profits as to some 1340 marketing stations, which are admitted to be fairly representative, and which comprise somewhat more than one-third of all the stations of the Standard companies, excluding the Waters-Pierce Oil Company, all as of the date of October 15th, 1904. The average profit per gallon of the Standard's domestic marketing companies on illuminating oil in the United States in 1904 was 1.60 cents (*b*). Taking this as a central point, we submit that a variation of one cent each way from the average margin may be reasonably be regarded as incidental or the result merely of the mechanical adjustment of the various and complex factors going to make up local prices. Mr. Finlayson, Manager of the National Oil Co., an independent marketing company, called by the Government, testified (*c*) that his company tried to make an average of 75 cents a barrel, equal to 1.50c. per gallon, marketing profit on refined oil; but that their actual profit varied from 50 cents to $1.50 per barrel, or from 1c. to 3c. per gallon. Obviously, the variation could not be less

---

(*a*) Record, Vol. 8, p. 923-39.
(*b*) Record, Vol. 10, p. 1624.
(*c*) Record, Vol. 5, p. 2300.

than one-half a cent each way, for oil prices vary only by that amount. But a variation of one-half a cent from the average is too small an allowance, in view of the difference in local conditions and the numerous complications entering into so vast a business. Subjoined is a table showing analytically the margins of profit of the 1340 stations, arranged with reference to 1.60 cents as an average profit.

NUMBER OF STATIONS BY DIFFERENT GROUPS OF MARGINS OF PROFIT AS OF OCT. 15, 1904, AS SHOWN ON PET. EX. 391, VOL. 8, PP. 923-939.

Approximate Margins.	Per Cent.	Number of Stations.
*3.01 to 3.40 inc.	*.15	2
*2.26 to 2.75 "	*.22	3
*1.01 to 1.50 "	*.30	4
* .01 to 1.00 "	*1.34	18
.01 to .60 "	5.97	80
.61 to 1.10 "	11.49	154
1.11 to 1.60 "	29.03	389
1.61 to 2.10 "	26.20	351
2.11 to 2.60 "	13.96	187
2.61 to 3.00 "	3.88	52
3.01 to 3.50 "	1.94	26
3.51 to 4.00 "	1.94	26
4.01 to 4.50 "	1.57	21
4.51 to 5.00 "	.37	5
5.01 to 5.50 "	.45	6
5.76 to 6.00 "	.22	3
6.01 to 6.50 "	.52	7
6.51 to 7.00 "	.15	2
7.01 to 7.25 "	.22	3
7.51 to 7.60 "	.08	1
Total	100.00	1,340

*Means loss.

From this table, it appears that the number of stations whose margins of marketing profit varied between 1.11 cents and 2.10 cents, or only $\frac{1}{2}$ cent variation each way from the average profit, (which is the very lowest theoretically possible variation,) was 740 or more than 55 per cent. numerically of the total; and that *the number of stations, whose margins of profit fell between .61 cent and the 2.60 cents, or a variation of one cent each way, from the average,* (which Defendants contend is the smallest possible limit of variation to be counted on in the practical operation of business,) *was 1,081, or 80.68 per cent. of the total number of stations.*

IV. Deducting 1,081 from 1,340, we have left 259 stations, comprising those whose margins were either less than .61 cent, or more than 2.60 cents. Of these, 152 have margins above 2.60 cents, that is, more than one cent above the average margin. Nearly all of these can probably be explained by the small populations of the towns at which the stations are situated, with resulting small sales. It is matter of common knowledge that, in towns of small population, it is necessary for dealers to make a larger profit per unit in order to obtain a sufficient aggregate profit. The operation of this law of trade is shown in the stations of the Continental Oil Co., whose business covers substantially the Rocky Mountain Region. This entire region is sparsely settled ; the distances are immense ; total sales are relatively small and the margins of profit, during the period under examination, were necessarily higher on the average than elsewhere. It is more difficult to do business in these mountainous States ; the population is more scattered and farther apart. There is a greater distance between stations and a larger territory to be covered by each station. The rate of profit is greater on all commodities, because it is harder to do business, and, in many instances, because of the uncertainty of continuance, owing to the places being mining towns. Thirteen stations that had been established by the Continental Oil Co. were abandoned in 1904–1907, because the towns, which were mining communities, were abandoned by their population (*a*).

Out of the 152 stations having margins of more than one cent above the average, 39 of them are situated in the Rocky Mountain Region and, according to the Government Census of 1900, had populations ranging from 214 up to 6,283 ; 19 of them having a population below 2,000. There appear also 11 such stations in the Pacific Coast States having populations of from 1,308 to 4,258. (Appendix II., *post*, p. 263–4). There are also a number of towns in each of the two regions just mentioned of considerable population, but nevertheless situated in sparsely settled States, which in 1904 were reached by long freight hauls, and in respect to price conditions, were in much

(*a*) Record, Vol. 17, p. 3502–3503.

the same situation as the smaller towns just referred to. Excluding the towns and cities in the Rocky Mountain and Pacific Slope regions, there remain in the list 89 towns in the United States where the margins of profit of the defendants have exceeded 2.60 cents; that is, were more than one cent above the average margin of profit. An examination of the Census of 1900 shows that, of these 89 towns, four had a population of 500 or less; ten a population of from 500 to 1,000; nineteen a population of from 1,000 to 2,000, and eighteen a population of from 2,000 to 3,000. (Appendix II, *post*, p. 264).

V. Assuming but not conceding that, in a considerable number of instances, it be true that the prices of Defendants and their margins of profit were affected by competition, it may be remarked:

1. The Government's argument and its exhibits in this connection prove conclusively the very wide-spread competition in illuminating oil, and the absence and impossibility of any monopolizing on the part of the Defendants.

2. It is no crime for merchants to vary their prices under the action of competition. That is the law of trade and has been so from the beginning of the world. In practically every line of business, in every country, subject to certain obvious limitations, the seller sells as high as he can or as low as he must. Nor does the buyer, on his part, do business from philanthropic motives. He forces down the price as low as the relative demand and supply will permit,—relentless in availing himself of the seller's necessities. This fact of human experience is recognized in the law of all countries. A man's property is his own; he may keep it, or give it away, or sell it at what price or prices he will, and to whomsoever he will. If the buyer does not like the price, he may go elsewhere, or abstain from buying. These are general principles, and there are no grounds in the record for imposing a different mode of conduct upon these Defendants.

VI. The practice in this behalf charged against the Defendants is that pursued and defended by their principal competitors. Mr. Fehsenfeld, President and General Manager of the Red C Oil Company, of Baltimore, a very large independent company and one of the principal competitors of the Defendants, called by the Government in rebuttal, testified in part that, while his company usually made prices by taking the Baltimore price and adding freight to the point of delivery (*a*), it sometimes sold for less than the Baltimore price plus freight, owing to competition; that it charged a higher price in the suburbs of Baltimore than in the city in order "to average up the profit" and "because the Baltimore price represented a loss;" that, because he was selling at a loss in one place, he would not abandon the market, because to do so would be commercially impracticable; and he said (*b*):

> "Q. You would hold on there, and if you could get a better price and a more remunerative price somewhere else, you would get it,, wouldn't you? A. Sure."

Mr. Finlayson, Treasurer and Manager of the National Oil Company, of Norfolk, Virginia, testified to substantially the same effect (*c*).

(*a*) Record, Vol. 20, p. 145.
(*b*) Record, Vol. 20, p. 176–7.
(*c*) Record, Vol. 5, p. 2299–2300.

CHAPTER XV.

PROFITS.

FIRST: The Government's method of estimating profits is unsound in law and is contrary to business principles and the facts of human experience.

I. The method involves, first, the assumption that, in determining the profits of a business, all earnings whatsoever throughout the entire duration of the business, however long, whether drawn out and spent or saved and re-invested, are to be aggregated and set off against the small original investment. As to this assumption, it is enough to say that it has never heretofore, so far as known, been applied to any defendant in any court. There are few old established business concerns which have not obtained the bulk of their capital by annual accretions derived from surplus earnings. The history of commerce in all times is largely the history of enterprises, having small beginnings, which have become great in this way; nor has the propriety of such a course of accumulation ever before been challenged.

II. The Government's theory involves a second assumption not less unreasonable, namely, that the profits of a corporation are to be judged solely with reference to the nominal or par value of its outstanding capital stock, without regard to the amount of cash capital invested in the business, even though the actual assets in the business may be worth many times the par value of the stock. The proposition hardly requires discussion; to state it is to refute it.

III. *The fundamental fallacy in the Government's position is that it ignores the enormous cumulative effect of compound interest.* In 1882 the various properties held by the Standard Oil Trust were capitalized at $70,000,000, which Mr. Archbold testifies represented "the inventoried value fairly estimated." (a) Taking this amount as a starting point, and assuming that, irrespective of dividends, there had been added each year to the capital or surplus only 7 per cent compound interest down

---

(a) Archbold, Vol. 17, p. 8259.

to 1906, the resulting total would have been in that year $355,065,686.74.

But the Government claims that the actual value of the assets in 1882 was but $55,710,698. Assuming, though not conceding, such to have been the case and that, irrespective of dividends, there had been added each year to the capital or surplus only 8 per cent compound interest down to 1906, the total assets would then have amounted to $353,371,605.03.

The actual total assets in 1906 as shown below (*post*, p. 147) were $359,400,193.31; so that, on either of the suppositions just made, the resulting accumulations would have amounted to substantially what they were in actual practice.

IV. The most severe rule for estimating profits which can in reason be applied to the Standard Oil interests is to consider the ratio that such profits bear to the intrinsic or money value of the total tangible net assets of the business during the year for which the profits are taken. Even this rule is too extreme, for it takes no account of good-will, of acquired skill and experience, of value of organization, or of other elements commonly comprised under the term "earning power",—elements which have from time immemorial been regarded as a proper basis for profits.

SECOND: The total net profits of the Standard Oil interests as shown by the ratio of their "total net earnings" to the total net value of their assets year by year have been and are reasonable.

I. All profits whatsoever of the Standard Oil interests, whether derived from the production or transportation of crude oil or from the refining, manufacture or marketing of the products thereof, or from any and all other sources whatsoever, are all merged and included under what are denominated in the Record as *total net earnings*.

1. It is therefore immaterial how large the apparent profits of pipe line companies or of any specific refining or marketing company may have been, since their profits, large or small, are all included in the general fund denominated as "total net earnings."

2. Profits to a large extent have for years been derived by the Standard from sources entirely apart from oil business proper,—for example, from natural gas companies. Such ulterior profits are also included in "total net earnings" in the first table below but are deducted in a subsequent analysis (*post*, p. 155-6).

II. The following table shows the total net value of the assets of the Standard Oil interests, for each year, from 1883 to 1906, omitting the figures for 1897 and 1898, which are not in the Record and those of 1899 which are incomplete; also the "total net earnings" for each year, and the percentage of net earnings to net assets, the dividends for the same years and their rate computed on the "total net assets" (*a*).

PERCENTAGE OF NET EARNINGS AND DIVIDENDS TO NET ASSETS.

Year Ending Dec. 31st.	Total Net Assets.	Total Net Earnings.	Percentage of Earnings to Net Assets.	Total Dividends.	Percentage of Dividends to Net Assets.
1883...	$72,869,596.46	$11,231,790.56	15.413	$4,268,086.50	**5.86**
1884...	75,858,960.19	7,778,205.73	10.253	4,288,843.00	**5.65**
1885...	76,762,672.19	8,382,935.50	10.921	7,479,223.50	**9.74**
1886...	87,012,107.37	15,350,787.68	17.642	7,226,452.50	**8.30**
1887...	94,377,970.83	14,026,590.96	14.862	8,463,337.50	**8.97**
1888...	97,005,621.27	16,226,955.94	16.728	13,705,505.50	**14.13**
1889...	101,381,192.66	14,845,201.39	14.657	10,620,630.00	**10.49**
1890...	115,810,074.50	19,131,470.84	16.519	11,200,089.00	**9.67**
1891...	120,771,074.79	16,331,826.29	13.523	11,648,826.00	**9.64**
1892...	128,102,428.18	19,174,878.30	14.968	11,874,225.00	**9.26**
1893...	131,886,700.68	15,457,354.05	11.720	11,670,000.00	**8.85**
1894...	135,755,449.44	15,544,325.54	11.450	11,670,000.00	**8.60**
1895..	143,295,602.88	24,078,076.60	16.803	16,532,500.00	**11.54**
1896...	147,220,399.90	34,077,519.10	23.147	30,147,500.00	**20.48**
1897...					
1898...					
1899...					
1900...	205,480,449.09	55,501,774.52	27.011	46,691,474.50	**22.72**
1901...	210,997,006.13	52,291,767.61	24.783	46,775,390.00	**22.17**
1902...	231,758,405.58	64,613,365.45	27.880	43,851,966.00	**18.92**
1903...	270,217,921.85	81,336,994.27	30.101	42,877,478.00	**15.87**
1904...	297,489,225.47	61,570,110.75	20.697	35,188,266.00	**11.83**
1905...	315,613,261.55	57,459,356.08	18.206	39,335,320.00	**12.46**
1906...	359,400,193.31	83,122,251.76	23.128	39,335,320.00	**10.94**

(*a*) Pet. Ex. 10, Vol. 7, p. 32; Pet. Ex. 941, Vol. 21, p. 90; Petition, Vol. A, p. 109.

III. From the foregoing table it appears that the average percentage of "total net earnings" compared with the "total net assets" year by year in the thirteen years 1883-1895 was 14.256 per cent., and for the years 1900-06 was 24.544 per cent. There is no substantial difference of opinion between the Government and the Defendants as to the accuracy of the foregoing table.

IV. The increase in the rate of net earnings in recent years, as hereinafter explained in detail (*post*, p. 159) was not due to any real increase in the price of illuminating oil, nor in the rate of profit derived therefrom, but to the great expansion in the volume of by-products manufactured and sold, and to the higher prices realized upon the same owing to the greatly increased demand, and, in the case of naptha, to a shortage of supply.

V. Considering only the rate of profit shown for the later period, which for seven years, 1900-1906, averaged less than 25 per cent. on the total net capital invested year by year in the business, that rate of profit is a reasonable one for a great manufacturing business, involving the elements of risk which characterize the oil industry, *especially where, as here, a great proportion of the profits is derived from business with foreign countries outside of the protection of American laws, and in competition with the manufacturers and merchants of the world.* It is believed that few, if any, large manufacturing business enterprises in this country, at least in prosperous years, make less than 25 per cent. profits per annum when such profits are reckoned upon the actual cash value of their net tangible assets.

THIRD: The profits on the sale of refined oil in the United States, which is that part of Defendants' total business in reference to which the charge of monopolizing is chiefly made, form but a very small part of the total profits or "total net earnings" of Defendants, and are relatively inconsiderable in total amount.

I. The Government's case has proceeded substantially upon the theory that the business of the Defendants is the manufacture and sale primarily of refined or illuminating oil, and, to a much less extent, of naptha or gasoline. Other by-products have hardly entered into consideration. Most of the petition, at least three-fourths of the testimony and much the largest part of the statistical exhibits, relate directly or indirectly to Defendants' business in refined oil in the United States only. None of the grounds urged by the Government as tending to sustain the charge of monopolizing, except possibly the amount of Defendants' business, apply to naptha or gasoline. None of the grounds apply to lubricating oil (except railroad lubricants, separately treated, *post*, p. 237); nor to paraffine, the only prices given of which do not pretend to be those of the Defendants; nor to any other by-products. Indeed, the Record shows that the total sales of by-products by competitors, from 1899 to 1908, increased far more rapidly than those of the Standard, and their actual amount in bulk in the latter year must have nearly equalled that of the Standard's total sales of by-products (*ante*, pp. 101–3).

II. Omitting profits from natural gas and other extraneous sources and the profit on the Standard's own small production, the total profits made by the defendants are divisible into three parts:

(1) Profits on pipe line transportation;
(2) Profits on refining;
(3) Profits on the marketing or sale of the products.

From a single barrel of crude, however, are produced certain amounts of gasoline, refined oil, paraffine and other products by substantially one refining operation. Hence, a proportionate part of the profits made in transporting each barrel of crude and in manufacturing it into the finished products must in the last analysis be added to the marketing profit on each particular product derived from that barrel of crude, in order to arrive at the total profit on such product.

III. The total profits on the manufacture and sale of refined or illuminating oil, domestic and export, made by the Standard Oil interests, together with the proportionate part of the profits derived from the transportation of the crude oil amount in all to less than 50 per cent of so much of the total net profits of the Standard Oil interests as is derived solely from the transportation, manufacture and sale of petroleum and its products. This was Mr. Archbold's opinion (*a*), and a close analysis of certain exhibits in the case proves the position to be well taken.

1. The following table explains itself. It should be noted that there is always a slight loss in the refining process, so that the total yield of all products is less, bulk for bulk, than the total amount of crude oil consumed. Thus the percentage of total yield in 1895 was 95.20 per cent.; in 1900, 94.80 per cent.; in 1904, 94.11 per cent.; and, in 1906, 94.27 per cent. (*b*). These percentages are the basis for the figures in the column showing "total yield."

(*a*) Record, Vol. 17, p. 8356.
(*b*) Record, Vol. 20, p. 482.

CRUDE OIL CONSUMED—CRUDE OIL YIELD, AND THE DIVISION AS BETWEEN REFINED OIL AND ALL OTHER PRODUCTS BY S. O. CO. REFINERIES.

Year	* Total Crude Oil Consumed. (Gallons)	** Total Yield all products (Gallons)	*** Total Refined Oil (Gallons)	Percentage Refined Oil of total	Total By-Products (Gallons)	Percentage By-Products of Total.
1895	1,712,431,056	1,630,234,365	990,084,070	60.73	640,150,295	39.27
1900	1,872,159,702	1,774,807,397	1,098,236,795.5	61.88	676,570,601.5	38.12
1904	2,345,797,146	2,207,629,694	1,112,495,658	50.39	1,095,134,036	49.61
1906	2,728,248,642	2,571,919,995	1,209,441,341	47.02	1,362,478,654	52.98

Year	Refined Oil		By-Products	
	Increase over 1895		Increase over 1895	
	Gallons	Per Cent.	Gallons	Per Cent.
1900	108,152,725.5	10.92	36,420,306.5	5.69
1904	122,411,588	12.36	454,983,741	71.07
1906	219,357,271	22.14	722,328,359	112.84

* Figures for Crude Oil Consumption taken from Def. Ex. 267, vol. 19 p. 626.

** Figures for "Yield" were figured from percentage taken from vol. 20, p. 482.

*** Figures for Refined Oil (Export) were taken from Pet. Ex. 377, vol. 8, p. 904 for years 1900, 1904 & 1906. Figures for Refined Oil (Home Trade) for 1895, 1900 & 1906 were taken from Pet. Ex. 380, vol. 8, p. 905. Figures for Refined Oil (Home Trade) for 1904 were taken from Pet. Ex. 381, vol. 8, p. 907. Export deliveries for 1895 are not shown in Pet. Ex. 377, vol. 8, p. 904. To arrive at the combined Export and Home Trade Refined Oil figures for the year 1895—The Home Trade deliveries were taken from Pet. Ex. 381, vol. 8, p. 907 = 394,548,502 gallons. On Def. Ex. 276, vol. 19, p. 660, the percentage of Home Trade deliveries of the Total Export and Home Trade was 39.85%. As 394,548,502 gallons = 39.85%—100% equals 990,084,070 gallons—Export & Home Trade combined.

The foregoing table shows that the total amount of refined or illuminating oil produced by the Standard Oil interests in the four years mentioned formed only the following percentages of the total yield of all products in gallons, namely, in 1895, 60.73 per cent., in 1900, 61.88 per cent., in 1904, 50.39 per cent., and in 1906, 47.02 per cent. Thus, in 1906, the total amount of illuminating oil produced for foreign and domestic trade formed less than one-half of the bulk of the total yield of all products.

An examination of the gallonage and ratio of increase of refined oil on the one hand, and of by-products on the other hand, shows still more surprising results. The total production of refined oil for domestic trade and export from 1895 to 1906 increased only 219,357,271 gallons, or about 22 per cent. over 1895.

On the other hand, the total of all by-products increased in the same period by leaps and bounds, being larger by 722,328,359 gallons or by about 112 per cent. in 1906 than in 1895.

2. The following figures, compiled from Petitioner's Exhibit 396 (*a*), show the total net marketing earnings for the whole United States, domestic trade only, in the year 1906; the quantity sold; the total net earnings and the earnings per barrel on refined oil, naphtha and lubricating oil and on the total of all products, except as follows:

The figures in the table do not include the sales or earnings of the Borne-Scrymser Co., the Thompson & Bedford Dept., the Swan & Finch Co. nor the Galena Signal Oil Company, all of which handle lubricating oil only, nor of the Chesebrough Manufacturing Co., which makes and sells only vaseline. The *marketing earnings* of these last named companies added to the total marketing earnings on "all

---

(*a*) Record, Vol. 8, p. 1008.

products" shown in the table below, would increase the same to much more than double the net marketing earnings on refined oil. Even as the table stands, these net earnings on refined oil are only $7,012,899.82 as against $13,750,408.73, net earnings on all products, or about one-half. It appears also that in the year 1906, the average marketing earnings per barrel on refined oil were 77 cents; on naphtha, 87 cents; on lubricating oil, 89 cents, and on all products 84 cents.

"All products" embrace every product of petroleum, including refined oil. (*a*)

	Barrels.	Net Marketing Earnings.	Marketing Earnings per bbl.
Refined Oil	9,165,542	$7,012,899.82	77c.
Naphtha	4,929,804	4,299,534.68	87c.
Lubricating oil	1,653,962	1,479,191.36	89c.
Total all products	16,452,409	13,750,408.73	84c.

It also appears from an inspection of other exhibits that the refinery price of naphtha mentioned in the foregoing table (which does not include gas naphtha or gas oil) has, for a number of years, been much higher than the refinery price of illuminating oil (*b*). The prices of lubricating oils are, of course, very much in excess, bulk for bulk, of those charged for illuminating oil.

(*a*) Compiled from Pet. Ex. 396 (Vol. 8, p. 1002) excluding Canada and West India Oil Co., but including 68.675 per cent. of the estimated W. P. O. Co., U. S., which is based on 1904 W. P. O. Co., U. S.

Petitioner's Exhibit 396 did not include for the year 1906 the sales of W. P. O. Co.; therefore, in order to obtain the total sales, the net earnings and the profits per barrel, as above shown, for the entire United States in the year 1906, the figures for W. P. O. Co. sales, net earnings and profits per barrel in the United States for the year 1904 (the last year shown in the record) were taken from Petitioner's Exhibit 396, (vol. 8, at p. 1007) and the figures for those items were increased or decreased by the same percentages that the sales, earnings and profits per barrel increased or decreased in 1906 over 1904 in the United States, *excluding* the W. P. O. Co. in both 1906 and 1904, as derived by computations from the figures in Petitioner's Exhibit 396. The stock interest of the Standard Oil Company (New Jersey) in the W. P. O. Co. being 68.675 per cent. of the entire capital stock, this percentage of the estimated figures for W. P. O. Co. 1906 was taken and added to the total figures for the year 1906 for the remainder of the United States, as shown in Petitioner's Exhibit 396 (vol. 8, at p. 1009).

(*b*) Pet. Ex. 384, Vol. 8, p. 912;
Pet. Ex. 638, Vol. 10, p. 1624.

3. From the foregoing, it is clear that the principal by-products range much higher, in ratio of profit, than does illuminating oil; so that it is practically certain that the total profits derived from illuminating oil were in 1906 much less than the total profits derived from all the by-products taken collectively.

V. One more detail must be stated. In the year 1906, the Standard Oil interests exported 63 per cent. of the total amount of illuminating oil produced by them within the United States, leaving only 37 per cent. of the total to be marketed by them in this country (*a*). Since, in that year, the total illuminating oil produced by the Standard Oil interests was only 47 per cent. in bulk of the total of all their products, and since only 37 per cent. of their illuminating oil is sold in the United States, it follows that said last named amount (37 per cent. of .47) was only 17.39 per cent. in bulk of the total products. *In other words, in the year 1906, bulk for bulk, the illuminating oil sold in the United States by the Standard Oil interests formed only about one-sixth of their total products.*

VI. The amount which the net profits made by the Standard Oil interests upon their domestic business in refined or illuminating oil does not exceed, may now be computed with substantial accuracy.

1. The accompanying table (p. 155) shows the deductions to be made from the "total net assets" and "total net profits" in the year 1906, as above set forth (*ante*, p. 147). The only profits properly to be considered in this case are those arising from the transportation, manufacture and sale of petroleum and its products. All other profits should be excluded. The gas companies need no explanation. The profits on the producing companies represent the difference between the cost of production and the market price of the small amount of crude oil produced by the Standard from its own oil lands. That is to say, these are profits which the Standard Oil interests (if they had not had the producing properties) would have had to pay to others. So, likewise, the item of lighterage represents what must have been paid to others if the lighters were not

---

(*a*) Def. Ex. 276, Vol. 19, p. 660; Archbold, Vol. 17, p. 3288.

owned by the defendants, and are no part of the ordinary profits of the petroleum industry. The item of "Profit on sale of Buckeye Pipe Line certificates" represents an increase in the value of stored oil, comparing its value in the market when used, with its cost.

STATEMENT OF DEDUCTIONS TO BE MADE FROM TOTAL NET ASSETS AND TOTAL NET PROFITS DECEMBER 31ST, 1906.

Properties.	S. O. Co. (N. J.) Percentage of Holding.	Deduction from Total Net Assets.	Deductions from Total Net Profits.	Source of Information.
Natural Gas Companies				
Clarksburg Light & Heat Co.	51%	143,160.77	48,175.31	Pet. Ex. 12A
Hope Natural Gas Co.	Entire	2,611,574.38	1,427,694.45	" " "
Lawrence Natural Gas Co.	do	344,479.36	86,523.25	" " "
Mahoning Gas Fuel Co.	do	193,363.87	45,363.94	" " "
Mountain State Gas Co	do	526,251.85	165,177.86	" " "
North Western Ohio Natural Gas Co.	32989 55504	356,585.49	156,674.92	" " "
The Peoples' Natural Gas Co	Entire.	4,301,700.62	86,202.95	" " 12B
The Pittsburg Natural Gas Co	do	253,866.69	*24,341.29	" " "
Reserve Gas Co.	11126 22250	803,907.20	42,451.36	" " "
The River Gas Co.	10/19	141,815.69	44,146.20	" " "
Taylorstown Natural Gas Co	80%	9,394.05	2,745.93	" " "
		9,685,999.97	2,080,814.88	
Producing Companies				
The Carter Oil Co.	Entire	2,220,254.41	570,994.24	" " 12A
Marion Oil Co.	50	58,945.06	28,890.01	" " "
The Ohio Oil Co.	Entire	9,281,136.44	2,090,492.23	" " "
South Penn. Oil Co.	do	14,915,185.15	2,609,721.30	" " 12B
Washington Oil Co.	71.48%	97,273.52	53,716.98	" " "
S. O. Co. of N. Y. Lighterage Dept.	....	2,710,330.01	939,843.28	" " 273A
Profit on Sale Buckeye Pipe Line Ctfs	....	....	1,829,838.80	" " "
		38,969,124.56	10,204,301.71	

*Loss.

2. The following summary gives the result desired :

Total net earnings of Standard Oil interests for year 1906 (*ante*, page 147) were	$83,122,251.76
Total deduction as per statement, page 155	10,204,301.71
Total net earnings, 1906, from petroleum business proper	$72,917,950.05
Estimated profits on total business (foreign and domestic) in illuminating oil, not exceeding 50 per cent. of total amount of net earnings from petroleum business proper and not over	36,458,974.02
Profits on illuminating oil, domestic business only, being 37 per cent. of total (foreign and domestic), not over	13,489,820.75
Add 68.675 per cent. estimated marketing earnings of Waters-Pierce Oil Co. in U. S. in 1906, not otherwise included (see note, *ante*, p. 153)	433,866.79
Total estimated profits on domestic business in illuminating oil, not over	$13,923,687.54

From this it appears that the profits of the Standard Oil interests on their domestic refined oil industry in the year 1906, when the " total net earnings " were largest, were probably less than fourteen million dollars, a very inconsiderable sum on which to base a charge of monopolizing, when the size of the total business of the defendants is considered.

VII. But it is contended in answer to the foregoing argument that the profits on export business are not proportionately as large as those on domestic business ; and attention is directed to the fact that the apparent rate of profits of the foreign companies is lower than that of some of the domestic companies and is even lower than the average rate of " total net earnings " of the Standard Oil Company of New Jersey. This may be admitted but proves nothing.

1. The assumption made as a basis of the foregoing argument is that the average rate of total profits on all export refined oil is at least as large as the average rate on all the refined oil sold in the domestic market. Comparison of the rates of profit of different companies, foreign and domestic, on their individual business helps very little in determining this matter. Certainly the comparisons made by the Government are valueless.

(A) Because most of the domestic companies are both manufacturing and marketing and the foreign companies are marketing only.

(B) Because the profits of any company are gained not merely on refined oil, which is the only product here under discussion, but also and more largely on the various by-products, and the proportion of by-products exported and sold by the Standard's foreign companies is much less than that sold by its domestic companies.

2. Defendants' total profits on their petroleum business, as already stated, are derived :

(1) From transportation

(2) From refining

(3) From marketing.

In the case of export oil, all of the profits from the first two sources are obviously made by some of the domestic companies ; since, as already stated, foreign companies only market. Therefore, to make a fair comparison, it would be necessary first to subtract from the total profits of the domestic companies the pipe line and refining profits derived from handling that part of the crude which goes into export refined oil and other export products and then to add the same amount to the profits of the foreign companies.

In 1906, the American Petroleum Company, which markets in Holland, Belgium and the Rhine, made 30 per cent. profit on the amount of its net assets (*a*) ; the Imperial Oil Company, which markets in Canada, made 18.4 per cent. ; the Italian marketing company 15.9 per cent. ; the Anglo-American Oil Co. (the English marketing company) 11.01 per cent. (*b*) ; the Deutsche-Amerikaniche Petroleum Gesellschaft (the German marketing company) 13.06 per cent. (*c*). On the other hand, in the same year, the " total net earnings " on the entire business were only 23.128 per cent. of the " total net assets " (*ante*, p. 147). If the suggested transfers of profits from domestic to export business were made, there would probably not be very much difference in total profits between domestic and foreign companies, and the difference if any would be accounted for by the smaller percentage sold abroad of by-products, which, as is shown below (*post* p. 159), are, bulk for bulk, far the most valuable part of the business.

(*a*) Record, Vol. 8, p. 662.
(*b*) Record, Vol. 7, p. 490.
(*c*) Record, Vol. 8, p. 650.

3. Furthermore the prices at which refineries have sold refined oil for export have been almost uniformly higher than the prices at which they have billed the same kind of oil to the domestic marketing departments. This would indicate a higher profit on foreign business than on domestic. The following are the figures:

PRICES IN CENTS PER GALLON.

Years.	Water White Oil.		Standard White Oil.	
	Pet. Ex. 1041 Average Export Prices.	Def. Ex. 293-B Average refinery prices to domestic trade.	Pet. Ex. 1041 Average Export Prices.	Pet. Ex. 379. Average refinery prices to domestic trade.
1900	6.96	5.44	5.65	4.34
1901	5.60	4.96	4.68	3.80
1902	5.71	5.45	4.70	4.48
1903	7.39	6.85	5.84	5.77
1904	6.81	6.76	5.28	5.79
1905	5.68	5.42	4.10	4.23
1906	6.14	5.88	4.48	4.41
Average 7 yrs.	6.33	5.75	4.96	4.72

4. In this connection, the testimony of Mr. Benson of the Tide Water Company (*a*) is very significant. He says:

> "The reason we sell refined oil or burning oil abroad is that we get a better price, * * * because it pays better than the home trade market. We only sell in the home trade market what we can't sell abroad.'

5. Assuming, however, for the sake of argument that the average rate of total profit on domestic refined oil were twice as large as that on the refined oil sold abroad, (an assumption utterly unwarranted by the proofs), the aggregate net profits on the domestic trade in refined oil would still be relatively so small that all the arguments heretofore advanced hold good

(*a*) Record, Vol. 1, p. 230.

in regard to it. Thus:

Total net earnings, 1906, from petroleum business proper.....	$72,917,950.05
Estimated profits on total business (foreign & domestic) in illuminating oil, not exceeding 50 per cent. of total amount of net earnings from petroleum business proper and not over.....	36,458,975.02
Profits on illuminating oil, domestic business only, being 37 per cent. of total (foreign & domestic) on the assumption that the rate of profits on the domestic business is double that on the foreign business, not over.....	$19,693,168.60
Add 68.675 per cent., estimated marketing earnings of Waters-Pierce Oil Co. in United States in 1906, not otherwise included.....	433,866.79
Highest possible estimate of profits on domestic business in illuminating oil not over.....	$20,127,035.39

In other words, even on the extravagant assumption thus made, the largest amount of profits which could be charged against the domestic business in refined oil, in 1906, is about $20,000,000—less than two-sevenths of the total net earnings on the petroleum business alone of the Defendants in that year. Similar results would be reached by like analysis for the preceding years in the history of the Defendants' business.

It thus appears that the charges concerning alleged unreasonable profits earned by the Defendants are certainly not sustained in reference to domestic sales of illuminating oil, which is that part of the business as to which the Government has made its main contention.

But neither can the charges be maintained as to the business in by-products.

FOURTH: The increase, both in the amount and in the ratio of total net profits, in recent years, has been chiefly due to the greatly increased demand for the various by-products, resulting in a vastly greater aggregate of sales at higher prices.

I. The increase in the volume of by-products in 1906 over 1895 was 722,328,359 gallons (*ante*, p. 151). The total profit on all this vast increase enters into the total net earnings for the year 1906, and none of it existed in 1895, nor was any of it derived from the business of illuminating oil.

II. The increase in the proceeds of the sale of naphtha or gasoline strongly illustrates the importance of the larger volume of by-products. The average price per gallon of finished naphtha to the trade, less freight and marketing cost, in 1895 was 7.16c., and in 1906, 10.80c. (*a*) The total sales of naphtha in the United States alone in 1895 were 2,216,789 barrels of 50 gallons and in 1906, 4,967,960 barrels. (*b*) These figures give the following results :

1906. 4,967,960 bbls. at 10.80c. ($5.40 per bbl.)	$26,826,984.00
1895. 2,216,780 bbls. at 7.16c. ($3.58 per bbl.)	7,936,104.62
Increase in proceeds of domestic sales of naphtha over 1895....	$18,890,879.38

The list of valuable by-products of petroleum made by the Standard Oil interests is a very large one. Mr. Archbold mentions the following (*c*): Naphtha, gas oil, fuel oil, paraffine oils, compounded oils, spindle oils, wool stocks, filtered cylinder oils, unfiltered cylinder oils, waxes, paraffine waxes, candles, greases, coke, pitch, road oils, asphalt and paving residuums, roofers' wax, soap stock, cordage oils, acid oil, turpentine substitutes, engine distillates, petrolatum and vaseline.

III. *Naphtha Prices :* The rise in prices of naphtha or gasoline between 1895 and 1906 was due to a greatly increased demand and shortage in supply. Mr. L. J. Drake, vice-president of the Standard Oil Co. of Indiana testified that the demand for naphtha was very light in 1895–7 ; that during that period his Company could not sell their naphtha readily and had more on hand than they could dispose of ; that the extensive introduction of gasoline stoves, and later of automobiles, brought about a greatly increased demand ; that, in 1899, and at intervals thereafter, the supply of naphtha or gasoline ran short, and that the Standard Oil interests were themselves largely influential in creating the new demand, in furtherance of which they spent $250,000. and employed 185 traveling agents, in advertising and pushing the use of gasoline stoves and the use of gasoline generally. He also testified that gasoline as a fuel was much cheaper than coal, so that

(*a*) Def. Ex. 298*c*, Vol. 19, p. 694.
(*b*) Def. Ex. 291, Vol. 19, p. 688.
(*c*) Record, Vol. 17, pp. 8955–6.

the increased use of gasoline for stoves or engines led to a positive economy on the part of the consumers (*a*).

Moreover, as the average prices received by the Standard Oil Company for finished naphtha in the domestic trade increased, the average percentage, and, therefore, the total amount, of naphtha sold in actual competition with the Standard also increased (*b*). The percentage of competitors' sales is not given prior to the year 1897. The following table shows the situation after that date:

FINISHED NAPHTHA.

Year.	Standard's total price to trade, less freight and marketing cost in cents per gallon.	Percentage total sales made by competitors.
1897	4.99c	8.8%
1898	4.94	7.7
1899	8.78	9.5
1900	7.77	11.2
1901	7.58	9.9
1902	8.74	9.4
1903	10.35	10.7
1904	9.17	13.6
1905	8.51	13.0
1906	10.80	13.0

From this evidence, which is neither contradicted nor weakened, it is clear that the changes in the prices of naphtha or gasoline were determined by the natural laws of supply and demand.

How great has been the increase in actual amount of sales of by-products by competitors has been already shown (*ante*, p. 101–2).

V. At one point in the case, counsel for the Government instituted a comparison between the profits of 1895 and those of 1906, basing the comparison upon the results obtained by dividing the "total net earnings" in each year by the total

(*a*) Drake, Vol. 17, p. 3535, 6, 8.
(*b*) Def. Ex. 293–C, Vol. 19, p. 694; Pet. Ex. 389, Vol. 8, p. 919.

number of barrels of crude run. As already shown, large deductions from these total net earnings should be made, in order to determine what were the net earnings derived from the petroleum business proper.

The whole contention, however, is fallacious.

1. It ignores the increase in the ratio of capital to product between the two years. The capital employed in 1895 was $143,295,602.88 (*ante*, p. 147). In that year, 40,772,168 barrels of crude were run by the Standard interests (*a*). In other words, the amount of capital employed in the business per barrel of crude run was about $3.51. On the other hand, the total capital employed in 1906, less deductions as per table (*ante*, p. 155) to correspond to the deductions from net profits, was $320,431,068.75, which was at the rate of about $4.93 per barrel of crude run; the total in that year being 64,958,301 barrels (*a*). This is an increase of net capital employed per barrel of crude run in 1906 over 1895 of $1.42, or about 40 per cent. increase. Whatever may have been the causes which made necessary the employment of this greatly increased amount of capital per unit of product, the fact cannot be denied and it must be taken into account in determining the reasonableness of the increase in the amount of profits. If it took 40 per cent. more capital in 1906 to handle a barrel of crude and its products from the well to the dealer, there should be a correspondingly greater return on the investment. If the profit per barrel in 1895 was, as contended, 60 cents, 40 per cent. increase upon that would be 24 cents; so that, merely with respect to the increased capital employed, and without increasing the rate of profit, defendants would be entitled to at least 84 cents per barrel.

2. The profits per barrel of crude in 1906 were about $1.12. This figure is arrived at by dividing $72,917,950.05, the total net earnings in 1906 from the petroleum business proper (*ante*, p. 156), by 64,958,301, the total number of barrels of crude run by the Standard Oil interests in the same year, 1906. From $1.12, the profits per barrel in 1906, deduct 84 cents, and we have 28 cents, or an increase of about one-third in the rate of the profits per

---

(*a*) Def. Ex. 968, Vol. 19, p. 697.

barrel. This increase is undoubtedly largely due to the greatly increased profits resulting from the development of the trade in by-products, already discussed at length. Moreover, allowance must be made for the fact that the year 1895 was one of considerable business depression, the country having not yet fully recovered from the great panic of 1893, while 1906 was a year of great prosperity and of greater demand, and, therefore, of larger profits in all branches of business.

These computations make no deduction either from earnings or assets in 1895 for the matters extraneous to the petroleum business proper, the data in the case being insufficient for such deduction. If, however, any deductions under this head were made, it would necessarily reduce the amount of capital per barrel of crude in 1895, with the result that the capital per barrel of crude in 1906 over 1895 would increase proportionately with the earnings, so that the result would be substantially the same. At any rate, it is clear that, making due allowance for the increase in capital per barrel of crude, and for the enlarged returns from by-products, there was very little, if any, real increase in the rate of profit per barrel of crude in 1906 over 1895 which can be charged to the business in refined oil.

FIFTH : The apparently large profits of individual domestic companies were due to great volume of business.

I. Much stress is laid upon the individual profits of some of the domestic companies, which are apparently high. These profits are explained by the great volume of business done by such companies, which, even at moderate rates of profit per gallon, have produced very large aggregates.

II. One of the best examples is the Standard Oil Co. of Indiana, which is a special object of attack. The total net assets of this Company at the end of 1906 were $24,302,043.37. The total earnings in the same year were $10,506,617.33, or about 44 per cent. (*a*), a larger percentage than in any previous year. It appears, however, that (ex-

(a) Record, Vol. 7, p. 25-29.

cluding the Waters-Pierce Oil Co. from consideration) the Standard Oil Co. of Indiana owns more than one-third of all the marketing stations in the United States (*a*) and that, in 1906, *it marketed nearly one-third of all the products sold in the domestic trade* (*b*) selling throughout the prosperous states of Kansas, Iowa, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Illinois, Indiana, and part of Missouri (*c*), a territory which in 1906 held collectively a population of over 20,000,000 people (*d*). *Its total marketing profits in 1906 were $4,224,589.*; yet its average marketing profit on refined oil was only 1.60 cents per gallon, the average for the whole United States in that year being 1.50 cents, and its average on all products was only 84 cents per barrel, while that for the whole United States was 82 cents (*e*).

But the Standard Oil Co. of Indiana also owns the two great refineries at Whiting and at Sugar Creek, which, in 1906, had together a refining capacity of 11,204,770 barrels of crude (*f*). The evidence shows that all the Standard refineries in that year were being worked practically to full capacity (*g*). The average refining yield of all products in 1906 was 94.27 per cent. of the bulk of the crude (*h*). This gives as the total output of all products by the refineries of the Indiana Company 443,634,941 gallons. There is no definite evidence in the record as to the rate of manufacturing profits, but it is only necessary to assume an average manufacturing profit per gallon of 1.416 cents on this great output to aggregate the sum of $6,282,028.33, which is the amount necessary, with the marketing profits, to make up the total profits for 1906 of the Indiana Company. This is shown in detail in the table below.

(*a*) Record, Vol. 19, p. 664.
(*b*) Record, Vol. 8, p. 1009.
(*c*) Record, Vol. 18, p. 1077.
(*d*) Census Bulletin, No. 71, Table 8, p. 16.
(*e*) Record, Vol. 8, p. 1009.
(*f*) Record, Vol. 19, p. 627.
(*g*) Record, Vol. 19, p. 696.
(*h*) Record, Vol. 20, p. 482.

STANDARD OIL CO. OF INDIANA.

Year 1906.

Total profits S. O. Co. of Indiana	$10,506,617.33
Less marketing profits	4,224,589.
Balance refinery profits	$6,282,028.33
Capacity Indiana refineries:	
Barrels, 11,204,770.	
Gallons, 470,600,340.	
Yield at 94.27 per cent. 443,634,941 galls.	
Refinery profit at 1.416c	$6,282,028.33

Of course, the *average* rate of profit above assumed, to wit: 1.416 cents per gallon, is not to be taken as the actual refinery profit on *refined oil*. On the contrary, as the previous discussion abundantly shows, the profit per gallon on the important by-products, especially naphtha and paraffine, in 1906, was much higher than on refined oil.

III. The Standard Oil Co. of Indiana was capitalized in 1892 at $1,000,000. The rapid increase of its capital up to approximately $24,000,000 in 1906 may be explained without assuming any unreasonable rate of profit. Mr. Archbold (*a*) testified that large loans were made to this Company by the Trustees, and said:

> "The loans, of course, played a very important part in the inauguration of the business and in its transactions for a period."

Counsel for the Government seem to think that this was answered by arguing that these loans had been repaid out of earnings. How fallacious this reasoning is will appear from the following:

The balance sheets of this Company for 1893 and the following years (*b*) show gross assets and liabilities as follows:

(a) Record, Vol. 17, p. 8479–82.
(b) Record, Vol. 21, p. 92–95.

	Gross Assets.	Liabilities.
1893	$7,251,036.05	$5,719,896.28
1894	6,738,772.86	5,252,840.55
1895	7,707,050.73	4,762,683.74
1896	8,023,027.13	3,373,518.91

These liabilities must have been very largely made up of loans, since it is incredible that a concern with no more than $1,000,000 of capital could incur such liabilities in the ordinary course of business. The liabilities of the Company apparently continue large down to 1906 (*a*). Making liberal allowance for ordinary mercantile debts and taking into account Mr. Archbold's testimony, it seems certain therefore, that this Company carried loans in its earlier years to approximately the following amounts;

1893	$5,500,000
1894	5,000,000
1895	4,500,000
1896–1899 (average)	3,000,000

It is obvious that such large loans, payable practically at the pleasure of the borrower, were equivalent to the same amounts added to the capital of the Company, except for the interest and the obligation to repay. It is also obvious that, in a comparatively few years, the principal of the loans could be paid off out of earnings; thus: Suppose the average rate of profit on the entire invested capital, owned and borrowed, was 25 per cent.; then, deducting 6 per cent. interest, there would have been a net profit on the borrowed capital in each year of 19 per cent. At this rate, the loans could be repaid out of earnings in about five years.

Bearing this in mind, a simple calculation shows that, starting with a capital of $1,000,000. in 1892 and assuming the loans to have been as above, and that the Company made an average profit of 25 per cent. per year on all capital, if we deduct six per cent. interest and the dividends actually paid and add the remainder to the surplus, the total net assets of the Company at the end of 1899 would have been $10,195,459, which is almost exactly their actual value, as stated in the record;

(*a*) Record, Vol. 7, p. 503–5.

thus showing the soundness of the foregoing method of computation (*a*). The increase from about $10,000,000. in 1899 to about $24,000,000. in 1906 is further readily accounted for by the large additions to the surplus made in each year out of the net earnings, which in turn were due to the immense volume of business done, as already explained with particular reference to the year 1906.

IV. A similar analysis would explain the apparently large profits of other individual companies. In the case of the marketing companies, the assets of the companies were relatively small, consisting chiefly of marketing stations; yet the companies did a very large business, so that their aggregate profits were very considerable;—though there is nothing to show that their rates of profit were unreasonably large. In this connection, the language of Mr. Justice BREWER, in *Cotting v. Kansas City Stockyards Co.*, 183 U. S., 79, at page 95, is very pertinent. Speaking of the power of a State to regulate charges in a stockyard, he says:

> "The State's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered. * * * In any action to recover for an excessive charge, prior to all legislative action, who ever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that was an unreasonable exaction for the services rendered?"

(*a*) Record, Vol. 7, p. 6; Vol. 21, p. 92–95.

V. With reference to Defendants' rate of profit, counsel for the Government quote two witnesses, Mr. Westgate and Mr. Bayne, to prove that a much lower rate of profit would be adequate. This use of their testimony is unwarranted. It is true that Mr. Westgate (*a*) said that

> "if we can make a half a cent a gallon on our product,—on our entire output,—we consider we are doing an extremely good business."

But he immediately admits that he has ordinarily received more, and his subsequent testimony is entirely inconsistent with this statement. Thus, he admitted that, at the time of his testifying, he was making a profit of two cents a gallon on gasoline, that at times he had made a profit of from eight to nine cents a gallon, selling gasoline which cost him 5 or 5½ cents at 13 or 14 cents, and that he thought prices too low (*b*).

As to Mr. Bayne, who testified that a cent a gallon "is a good profit", he was clearly talking about marketing profit only, and his opinion was of no value, because he admitted that his company had never marketed any oil, and that he had never been in the oil business prior to his connection with that company. He also admitted that his company only made a small profit and had never declared a dividend (*c*).

Moreover, Mr. Finlayson, Treasurer of the National Oil Co., called by the Government, testified that his company tried to make 75 cents per barrel or 1¼ cents per gallon as *average marketing profit* alone on refined oil (*d*). This was the Standard's average marketing profit on refined oil in 1906.

The whole argument, based on such testimony, is economically absurd. It involves the position that a manufacturer should sell his products always at a price equal to the cost of production, plus a certain profit, called "reasonable." Such a method of price making would be impracticable and would ruin any industry that would attempt it. Business runs in cycles of good years and bad years, and no man can foresee when either will begin or end. If a manufacturer were permitted during a period of prosperity to earn only a so-called "reason-

---

(*a*) Record, Vol. 6, p. 2879.
(*b*) Record, Vol. 6, p. 2900.
(*c*) Record, Vol. 2, pp. 790-800, 793.
(*d*) Record, Vol. 5, p. 2300.

able" profit, he would certainly go to the wall when the hard times came, for he would be unable to accumulate a surplus. Moreover, such a method of price making is impracticable, because it would impose upon a concern's accounting staff an impossible task. The costs of production in any concern are never constant. In a case of a manufacturing company like the Standard Oil Co., which markets one hundred or more different products made out of crude oil, no accounting system could apportion the costs from day to day with the slightest pretense of exactness. Apart from this, the theory ignores the law of demand and supply, and would deprive a skilled manufacturer of the profits due to better methods.

SIXTH: In view of the foregoing analysis, it is submitted that neither in the amount of Defendants' profits, nor in the ratio which they bear to net assets, nor in their increased rate in the later years of the business as compared with its earlier years, is there any support for Petitioner's charge that Defendants have monopolized or attempted to monopolize.

CHAPTER XVI.

ALLEGED UNFAIR METHODS OF COMPETITION IN MERCHANDISING.

FIRST: Incompetency of testimony for petitioner and failure to prove exhibits relating to the subject of "unfair" competition.

With few exceptions all the witnesses called on behalf of the petitioner on this subject, exclusive of witnesses now connected with the Standard, fall into two classes, first, competitors of the Standard, and, second, ex-employees of the Standard. In actual numbers, 51 of the petitioner's witnesses are competitors of the Standard and 31 of these competitors are also ex-employees of the Standard, while all other witnesses, exclusive of those whose testimony related to the Standard of New York, number only 5. As to the Standard of New York, there are in all 11 witnesses other than competitors and ex-employees.

I. *Competitors as Witnesses: Substantially all of Their Testimony is Incompetent as Hearsay.*

The testimony of competitors of the Standard on the main subjects in question, namely, cutting prices and giving secret rebates on the part of the Standard or of so-called bogus companies and securing information of competitive shipments from railroads, inasmuch as such testimony relates to transactions of the Standard, not with the witnesses, but with others, would be expected from the nature of it to be hearsay, and in fact substantially all of it is incompetent on that ground. It will be observed that the material subject of the testimony of these witnesses as to prices is not the market price in a given community, but whether a particular seller of oil is cutting under the market price or making special prices to individual customers. *There is no pretense that these witnesses have any source of information on the subject other than what they are told by the customers, or what their employees report the customers have told them* (a).

(a) Record, Vol. 20, p. 119-121.

The theory of the Petitioner's counsel in the introduction of all the incompetent testimony of these competitors, as announced by them from time to time in response to repeated objections by counsel for the Defendants, was propounded by Mr. Morrison as follows (*a*):

Mr. Morrison: Q. Go on now, Mr. Hisgen. A. After Mr. Allen told me of his transaction it was published in the papers, given wide circulation. I met Mr. Allen after that and he told me that Mr. Tuthill had called on him— *Mr. Milburn:* I object to the testimony. *Mr. Morrison:* Wait a minute. Let me ask you a question. Q. What you are about to relate now is a conversation with Mr. Allen, is it not? A. Yes, sir. *Mr. Morrison:* I think I won't ask you that now for the time being. Mr. Allen is here. *Mr. Milburn:* Morrison, is that the only reason why you don't? *Mr. Morrison: Yes, sir, that is the only reason that we don't do it. We think this evidence competent. We are willing to thresh this question out with you when you get into Court. We think what a man learns in the course of his business as to prices and conditions is competent evidence.*

II. *Ex-Employees: Their Testimony Largely Incompetent.*

The testimony of those competitors who were also ex-employees of Standard companies, in so far as it relates to the time of their employment, purports to describe, for the most part, operations of co-employees of which they may have heard but had no primary knowledge, or policies and purposes of their employers which were not formulated or executed by the witnesses, or individual methods of their own pursued without the knowledge of their superiors and without authority, and on account of which in many cases when discovered they were discharged.

The testimony of *Charles H. Mahle* illustrates this. He was a stenographer and assistant under F. E. Powell in the refined oil department of the Standard at Baltimore, Md., prior to 1903 (*b*). He never worked outside the Baltimore station while in the Standard's employ (*c*), and had nothing whatever to do with the Dixie Oil Works, a company owned by the Standard and under the management of C. W. Bender (*d*).

(*a*) Record, Vol. 4, p. 1828.
(*b*) Record, Vol. 5, p. 2347; Vol. 15, p. 2472.
(*c*) Record, Vol. 5, p. 2381.
(*d*) Record, Vol. 5, p. 2363.

Nevertheless the Government relied upon him to describe the operating methods of the agents of the Dixie Oil Works in the field in North and South Carolina and wherever else that company did business (*a*).

III. *Interstate Commerce Commission: Testimony taken Before and Read Into the Record.*

A considerable part of the testimony for petitioner was read into the record, by stipulation, from the records of proceedings before the Interstate Commerce Commission at Cleveland, Chicago and Kansas City. Under the stipulation this testimony was read into the record subject to all objections as to incompetency. When witnesses were examined before the Commission, no pretense whatever was made of observing the rules of evidence, and the resulting mass of incompetent testimony, made up of conclusions, conjectures, opinions and hearsay, was what would be expected under the circumstances.

IV. *Petitioner's Exhibits: Failure to Prove Them.*

Petitioner's exhibits relating to the subject of unfair competition consist principally of letters, telegrams, and contracts, or what purport to be such. It is not to be assumed that because these exhibits are found in the Petitioner's volume of exhibits or found spread upon the record, therefore they are properly in evidence. Quite the contrary is the case. Two examples will suffice to illustrate the kinds of evidence which Counsel considered sufficient to prove these exhibits:

Exhibit 917½. Witness, Lemuel Wilmer (b).

By Mr. Kellogg:

Q. I show you now a report of the committee of the retail merchants' association, marked "Petitioner's Exhibit 917½." And ask you if you ever saw that? A. (After reading the paper:) I assure you, sir, that I have never seen anything that looked like that up to this time, sir. Q. Did you see a publication in the newspaper that looked like that? A. No, indeed, sir, I didn't. Q. Never saw that? A. No, sir, I did not. I didn't know that any such meeting had ever taken place, I assure you. (There is no other proof of this exhibit.)

(*a*) Record, Vol. 5, p. 2364.
(*b*) Record, Vol. 18, p. 1278.

Exhibit 920. Witness, J. Flem Johnson (a).

By Mr. Kellogg :

Q. Who is Mr. J. F. Bukey ? A. Mr. Bukey used to be one of the managers in the Baltimore office. Q. Did you ever receive any communication from him ? A. No, sir. Q. You did not ? A. No sir. Q. I show you what purports to be a telegram or a confirmation of a telegram (reading into the record telegram addressed to W. R. Barksdale, signed J. F. Bukey). Was that transmitted to you? A. Not to my knowledge.

Mr. Kellogg : I offer Petitioner's Exhibit 920 in evidence. (There is no other proof of this exhibit.)

SECOND : Local price cutting.

Pleading.

Under the title : "Local Price Cutting", the petitioner alleges (*b*) :

In substance that where an independent has sold oil in a community in competition with any of the defendant companies, the Defendants have, as an unfair method of competition, cut the price in that community below cost, with the purpose and effect of driving out such independent and destroying his business.

Definition : The term " price cutting ", as used in connection with sales of refined oil as well as other commodities, includes two different methods of under-selling a competitor. One method is to make a reduction in price to all the trade in a certain locality below the market or prevailing price in that locality, while maintaining prices elsewhere,—in other words, a local reduction below the local market price. The other method is to make to certain purchasers special prices or concessions in price below the market or prevailing price and not open to all the trade in the locality where the concessions are made. These concessions may take the form of rebates, or of present deductions from the open price.

(*a*) Record, Vol. 13, p. 1461-2.
(*b*) Petition, Vol. A, p. 103.

I. *Irrelevant Evidence.*

It is price cutting by local reductions as distinguished from special prices to individuals that is referred to in the bill under the title, "Local Price Cutting". Should the Government attempt to array under this head its evidence as to special prices, as well as evidence of local price reductions, it would be misleading. Special prices, when made by any seller in the oil business, are practically never below cost, being rarely more than a fraction of a cent under the prevailing price, and, as stated above, are made, not to all the trade in any locality, but to favored individuals. They may be used to secure or hold individual customers against competition, but not to eliminate competition in a given locality. (See *post*, this brief, p. 182). Instances thereof could not supply the omission to prove local price cutting in connection with the charge that the defendants have driven competitors out of certain localities by under-selling them there and recouping their losses in other localities where there was no competition (*a*).

II. *Nature of the Evidence of Local Price Cutting.*

The only evidence offered on the part of the Government to support its allegations of local price cutting is the testimony of various witnesses, based merely on their recollection, all of whom were competitors of the Standard in the localities to which their testimony relates. The testimony of these witnesses, sixteen in number, is to the general effect that some Standard companies initiated reductions below their prices at various times. Practically all of it is incompetent as hearsay, and is, for the most part, otherwise inadequate because it does not determine whether such reductions were local or were due to general declines in the Standard's prices.

All the specific instances of alleged local price cutting referred to in the testimony for the Petitioner which are recent enough to admit of investigation have been gone into on the defense. In most cases, the actual cutting of prices by the competitor to which the local reduction, where there was one, was due has been proven by competent evidence. Sometimes the testimony is that the reduction in the Standard's local

---

(*a*) Petition, Vol. A, p. 108.

price was made to meet a cut in price by the competitor of which the Standard's agents were actually convinced upon credible information received in calling on the trade. *It is not contended that such testimony is competent on a question whether or not the competitor did cut the price, but it is unquestionably competent to show the reason of the reduction.*

III. *General Conclusion from the Evidence.*

How utterly the Government has failed to establish its averments of local price cutting as a method of competition on the part of the defendants may at once be inferred from the fact *that all the towns specified by the Government's witnesses where instances of this are claimed to have occurred number 37, while the Standard's companies as a whole are engaged in the business of selling refined oil by tank wagon in more than 37,000 towns throughout the United States* (*a*). Reference to the testimony in connection with a single Standard company will illustrate this comparison. The Standard Oil Co. of Ohio markets refined oil by tank wagon in 3,400 towns in Ohio (*b*). It has as competitors 40 refineries which are also engaged in marketing oil, 50 oil jobbers and about 240 wholesale houses handling oil or other products of petroleum (*c*). Officers of a number of these competing companies were subpœnaed by the Government for the hearing in this case at Cleveland. One only of these prospective witnesses was actually placed on the stand. That one was C. J. Castle of the Columbia Oil Co. His testimony has reference to just two instances of alleged local price cutting on the part of the Standard of Ohio, one at Cleveland and one at Lorain, and as to even these instances, the charge was conclusively disproved by competent oral and documentary evidence (*d*).

Of the 37 towns specified in the Government's testimony, ten in number were towns in South Carolina where the alleged price cutting was a single reduction not below cost, but of ½*c. a gallon*, made throughout the State of South Carolina by the Standard of Kentucky in 1904, and this was a reduction to meet in part a cut of one cent a gallon made by the Red C Oil Co. (*e*) Six of the towns were towns specified along the Hudson

(*a*) Defts.' Ex. 278, Vol. 19, p. 664; Vol. 13, p. 1535; Vol. 12, p. 932, 933; Vol. 13, p. 1078; Vol. 15, p. 2423; Stipulation, Vol. 17, p. 3531-3532; Pet.'s Ex. 829, Vol. 10, p. 1886.

(*b*) Record, Vol. 13, p. 1535.

(*c*) Record, Vol. 13, p. 1536; Def. Ex. 103, Vol. 18, p. 270.

(*d*) Record, Vol. 13, p. 1525-7, 1490-4, 1498, 1502-8, 1505-9, 1528-9, 1574.

(*e*) Record, Vol. 12, p. 962; Pet. Exs. 679, 680, 694, Vol. 10, pp. 1747, 748, 1763.

River in New York State where the Hisgen Bros. Oil Co. of Albany began selling oil in barrels shipped from Albany in 1901–1902. The Standard's records of prices show that instead of its prices being lowered in these localities, they steadily advanced during the period in question (*a*), and six representative grocers from these towns testified that instead of its being the Standard's price that was lowered, it was Hisgen Bros. who secured their trade from the Standard by cutting the Standard's price, and that they returned to the Standard without a reduction from the latter or a concession of any kind (*b*). The claims of the Government as to certain towns, namely: Washington (*c*), Richmond (*d*), Norfolk (*e*), Brooklyn, Lorain (*f*), New Orleans (*g*), and Terre Haute (*h*), were not proved or were disproved (*c*, *d*, *e*, *f*, *g*, *h*) and were abandoned in its brief in the Circuit Court. Instances alleged to have occurred at 12 of the remaining 14 towns were sufficiently recent to admit of investigation and in every instance it appears either that there was not even a local reduction in price (Cleveland (*i*), Atlanta (*j*), Birmingham (*k*), and Augusta (*l*)); or else that the reduction was forced by cut prices initiated and continued by the competitor. (Albany (*m*), Baltimore (*n*), Springfield, Troy, Pittsfield, Windsor, Windsor Locks, Thompsonville, *post*, p. 177).

IV. *Specific Instances.*

The instances of alleged local price cutting at Springfield, Mass., and Troy, N. Y., above referred to, have been most dwelt upon by counsel for the Government, and the proof as to them will serve to illustrate the other instances where local reductions in the Defendants' prices have been made to meet the prices of competitors.

1. The Standard's price at Springfield in January and February, 1904, was 11c. a gallon, and its margin of profit

---

(*a*) Record, Vol. 12, p. 713, 813.
(*b*) Record, Vol. 12, p. 812–3, 826–7, 830–1, 823–4, 818–9, 833–5.
(*c*) Record, Vol. 15, p. 2395–7, 2397-2405, 2406–10; Vol. 16, p. 2608–10.
(*d*) Record, Vol. 13, p. 1[illegible]–8; Vol. 5, p. 2382.
(*e*) Record, Vol. 5, p. 2286–7.
(*f*) Record, Vol. 18, p. 1490–4, 1498, 1502–3, 1505–9, 1528–9, 1574.
(*g*) Record, Vol. 12, p. 904–6.
(*h*) Record, Vol. 12, p. 916–7.
(*i*) Record, Vol. 13, p. 1525–7.
(*j*) Record, Vol. 12, p. 911, 897–901.
(*k*) Record, Vol. 12, p. 908–9, 847.
(*l*) Record, Vol. 12, p. 910–11, 934.
(*m*) Record, Vol. 12, p. 713–4, 716, 766–72.
(*n*) Record, Vol. 16, p. 2612–9; Vol. 15, p. 2461–6; Vol. 20, p. 110.

1.37c. (*a*) On February 20, 1904, Hisgen Bros. of Albany, N. Y., began a business of wholesaling oil at Springfield, selling at the price of 10½c. (*b*) a gallon ; the Standard, after losing considerable trade on account of this cut in price, reduced its price to 10½c. a gallon, thereby reducing its margin of profit to .87½c ; thereafter, the Standard's price at Springfield declined gradually until it reached 7c. in 1905, such decline being partly, namely, to the extent of 2½c., due to a general decline in price throughout a wide territory corresponding with a decline in the cost of oil (*c*), and partly, namely, to the extent of 1½c., due to following down cut prices initiated by Hisgen Bros. In the latter part of 1904, and during part of 1905, this decline in the Standard's prices netted a marginal loss amounting to at one time as much as .88c. a gallon (*a*). In the latter part of 1905, upon information that Hisgen Bros. had stopped cutting prices (*d*), the Standard's price was advanced to a profitable basis (*c*). During 1904, Hisgen Bros. did 21% of the oil business at Springfield, and increased this percentage to 30% in 1905 (*e*). The Government's only witness was Thomas L. Hisgen, whose testimony, based purely on hearsay and without a particle of competent evidence to corroborate it, was that the Standard and not his Company initiated every decline. The witnesses for the defense were the Standard's department manager and local agent at Springfield, whose testimony, based on convincing information received in calling upon the trade, was that every cut in price was made by Hisgen Bros (*f*). It is not claimed that their testimony is competent any more than that of Thomas L. Hisgen as to the *fact* of price cutting by the competitor, but it is competent to show that the Standard's prices were lowered *for the purpose* of meeting the prices of the competitor. And as to the *fact* of price cutting, *it is incredible that the Standard lost 21% of its trade at Springfield in 1904, and 9% more, making 30%, in 1905, to Hisgen Bros. by cutting Hisgen Bros.' price.*

(*a*) Pet. Ex. 635, Vol. 10, p. 1636.
(*b*) Record, Vol. 12, p. 782.
(*c*) Pet. Ex.635, Vol. 10, p. 1636.
(*d*) Record, Vol. 12, p. 783–4.
(*e*) Pet. Ex. 635, Vol. 10, p. 1636; Record, Vol. 12, p. 785.
(*f*) Record, Vol. 12, p. 782–4; 809–810.

2. The Government's witness as to prices at Troy was L. T. Messner, manager of the Tiona Oil Co., who after stating the Tiona's prices in 1905, testified that the "Standard Oil Co. made the cuts from the January price downward first and the Tiona Oil Co. followed the price down in every case," and when the price went up in the fall, the Tiona was the first to raise it (*a*). The following tabulation speaks for itself (*b*):

Tiona Oil Co. Prices at Troy. 1905.		Standard's Prices at Troy. 1905.	
January	9.00	January 9	9.00
"	8.00	February 6	8.00
February 1	8.00	February 13	7.00
"	7.00	September 18	7.50
June	7.00	October 23	8.50
"	6.00		
September	6.00	(Foregoing tabulation shows all changes in prices for 1905; the prices as given on any date remaining the same until date of the next change.)	
"	6½		
October	6½		
"	7½		
November	8½		
December	8½		

The Government has attempted to evade these figures on the theory that what Messner meant to say was that the cuts were made by either the Standard Oil Co. or the Troy Oil Works, a company owned by the Standard and operating at Troy. There is not the slighest indication in Messner's examination that he intended so to testify or that such was the fact (*c*).

V. *Policy and General Practice of Standard Companies Regarding local prices in Their Relation to Competition.*

That the policy and general practice of the Standard companies referred to in the Government's testimony is directly opposed to and inconsistent with the cutting of local prices in any community for the purpose of driving out competitors, or

---

(*a*) Record, Vol. 20, p. 54.
(*b*) Record, Vol. 20, p. 53, 447.
(*c*) Record, Vol. 20, p. 46–48, 53–54.

destroying their business, or for *any other purpose*, and that local reductions in price have not been authorized or made except to meet lower prices initiated by competitors, is the evidence of general officers of those companies in immediate charge of the marketing departments of the business, and their testimony to that effect is corroborated by that of various managers of divisions of these departments (*a*). All the Government's testimony on this subject against the Standard of New Jersey relates to the Baltimore Division of that Company. That Company placed upon the stand its local agents and salesmen to the number of 30 from throughout the territory in which the Baltimore Division operates, and proved by them the rule never to cut a price, which rule was given to them and followed by them during the entire term of their service (*b*). It is simply incredible that if the method of local price cutting charged by the Government existed, it should not have become apparent on the examination and rigid cross-examination of all these witnesses.

Moreover, there was selected for special investigation on the defense instances appearing on the Price Exhibits of local reductions in price at one or more representative towns in the territory of each of the Standard's marketing companies, and the local conditions accounting for such reductions were proved. In every case it appeared that the decline in the Standard's price was forced by the price cutting of the competitor. See for

---

(*a*) Record, Vol. 12, p. 687–689, 810, 896, 845; Vol. 13, p. 1536–1538, 1100.

(*b*) Record, Vol. 13, p. 1154, 1155, 1180, 1191, 1201, 1203, 1313, 1321, 1346, 1347, 1354, 1365, 1377, 1389, 1391, 1392, 1393, 1401, 1421, 1425, 1428, 1438, 1444, 1447, 1449, 1470, 1475, 1337, 1344, 1388, 1451, 1110, 1152, 1214, 1252, 1289, 1290, 1298, 1332, 1333; Vol. 15, p. 2439, 2442, 2448, 2473–2474, 2479.

the evidence of this, as to Los Angeles, Cal. (*a*), Denver, Col. (*b*), Hartford, Conn. (*c*); Worcester, Mass. (*d*); Albany, N. Y., 1905 (*e*); Philadelphia, Pa. (*f*); Washington, D. C., 1902 (*g*); Baltimore, Md., 1905 (*h*); Duluth, Minn., 1904 (*i*); Minneapolis, Minn., 1902 (*j*).

Reductions in price, when made to meet the prices of competitors as distinguished from cutting the competitor's price, can obviously only be made to hold trade or a share of the trade already possessed, and also possibly to regain trade or some of the trade lost on account of the cut in price to meet which the reduction is made. If this is monopolizing trade, then competition in any locality under such circumstances must cease, and all the business be handed over to the latest comer who is willing to take it at a cut price.

VI. *No Competitor's Business Destroyed.*

All the competitors concerned in the alleged instances of local price cutting were the Hisgen Bros. Oil Co., The Red C Oil Co., Crew-Levick Oil Co., Richmond Oil Co., National Oil Co., Cooper Bros., Pure Oil Co., Columbia Refining Co., Commercial Oil Co., Southeastern Oil Co., G. T. Wofford Oil Co., Terre Haute Oil Co., H. C. Boardman. and the Cornplanter Refining Co. with its subsidiary the Tiona Oil Co. Of these, all but the Commercial Oil Co. and the Southeastern Oil Co. have not only continued in business but have steadily grown and prospered (*k*). Thus Hisgen Bros. since 1900 have extended their business throughout the Standard's Albany and Providence departments in the States of New York, Massachusetts, Connecticut, Rhode Island and Vermont, cutting prices to establish themselves in any new field and doing a profitable business when they

---

(*a*) Record, Vol. 17, p. 3500–3503, 3619–3628.
(*b*) Record, Vol. 17, p. 3499–3500.
(*c*) Record, Vol. 12, p. 801–802.
(*d*) Record, Vol. 12, p. 802.
(*e*) Record, Vol. 12, p. 766–771.
(*f*) Record, Vol. 15, p. 2424–2425, 2410–2416.
(*g*) Record, Vol. 16, p. 2608–2611; Vol. 15, p. 2395–2410.
(*h*) Record, Vol. 16, p. 2612–2619; Vol. 15, p. 2461–2466.
(*i*) Record, Vol. 15, p. 2382–2386.
(*j*) Record, Vol. 15, p. 2387–2388.
(*k*) Record, Vol. 5, p. 2332–2333, 2391, 2404–2405, 2285–2286, 2162; Vol. 6, p. 3067–3068; Vol. 20, p. 106–109.

allowed prices to resume a normal level (*a*). Defendant's Exhibit 89 is a pictorial representation issued by Hisgen Bros. of the growth of their plant at Albany, showing that from a single small structure in 1889 it had grown in 1906 to an imposing array of buildings, covering an extensive area and including a factory, refinery, warehouse, offices, storage tanks, railroad sidings, etc. H. C. Boardman at Augusta, Ga., is typical of a competitor whose business is confined to one locality. He testified that his business had been profitable from the start and that it has increased to such an extent that he is now doing one-third of the entire business in refined oil in Augusta and seventy-five per cent. of the business in lubricating oils (*b*).

The two companies named as exceptions were not driven out of business, nor was their business destroyed. They were small local concerns that were purchased by the Standard of Kentucky. When the Southeastern Oil Co. at Binghampton, Ala., was purchased, at its own instance (*c*), there had not even been a local reduction in the Standard's price (*d*). The Commercial Oil Co., a subsidiary of the Peerless Refining Co. of Ohio (*e*), was selling oil in barrels at Atlanta, Ga., at 6½c. a gallon (*f*), while the Standard's price there was 8c. a gallon during the year 1897 immediately prior to the purchase (*g*). *It may be* that the parent company came to realize that selling oil in barrels was out of date and rather than expend new capital for tank stations and a tank wagon service, preferred to find a purchaser for the property and good will of its subsidiary.

(*a*) Record, Vol. 4, p. 1836–1844.
(*b*) Record, Vol. 5, p. 2171, 2181.
(*c*) Record, Vol. 12, p. 848.
(*d*) Record, Vol. 12, p. 908, 847, 848.
(*e*) Record, Vol. 5, p. 2094.
(*f*) Record, Vol. 5, p. 2096.
(*g*) Record, Vol. 12, p. 897.

THIRD: Reports of Competitors' Shipments.

Pleading.

Petition, XXIV, Vol. A, p. 104: In substance, that defendants have conspired and agreed with various railroads, railroad employees and others, to secure and have secured from them, full reports of the shipments of oil by competitors over various railroads, and by means of such reports a countermand of the order was secured, and, failing in that or in inducing the consignee to become thereafter exclusively a patron of the defendants, the price at such point was in many cases reduced to a ruinous figure.

Facts.

I. *Method of Obtaining Information of Competitors' Shipments.*

There is no evidence of any description that the Defendants or any of them have conspired or agreed with any railroad to secure, or have secured from any railroad, reports or information of competitive shipments over any railroad, and the allegation of the bill to that effect may be dismissed from consideration.

It is fully conceded and asserted and the facts show that the various marketing departments of the Standard Oil companies have obtained information of the shipments by competitors of refined oil and other products of petroleum over railroads in proper and legitimate ways, and have used such information legitimately in their business. The authorized method by which the Defendants have obtained such information is through their local agents, salesmen, commission men, tank wagon drivers and draymen, who were instructed to note and report all shipments of petroleum products which came under their observation, or which they learned of from the trade (*a*). The salesmen of the Standard are continually travel-

---

(*a*) Record, Vol. 2, p. 846-847, 857-858, 820-826, 751-752; Vol. 13, p. 1515, 1546-1547; Vol. 3, p. 1502-1506; Vol. 12, p. 1015-1017.

ing on the railroads; its local agents, commission men and drivers go many times a day to the stations in the ordinary course of their business, and both the incoming and outgoing shipments of competitors are continually under their observation (*a*). As the reports of these men came in from points of shipment, of transit, of destination and of delivery, they corrected each other and the system furnished a fairly comprehensive estimate of the business of competitors as a whole In some States where the records of oil inspectors and deputy inspectors are public, the Standard could and did get monthly statements of competitors' shipments from these records, which further completed its information on the subject (*b*).

There appear upon the record several isolated instances where some local agent of a Standard company, ten years or more ago, obtained information of competitive shipments from a minor railroad employee. It is perfectly clear from the evidence as a whole that this has never been a general practice with any Standard company, and such instances as do appear all relate to a period prior to 1899, except in the case of M. Maxon, a local agent in the employ of the Standard of Kentucky, who appears to have had an arrangement with a railroad station agent for information of this sort as late as July, 1900 (*c*). When such an arrangement was discovered by an officer of any Standard company, it was stopped. Thus, in 1896, L. J. Drake, who was then general manager of the Sales Department of the Standard of Indiana, a company which does one-third of the marketing business done by all the Standard Oil companies, heard in a roundabout way that George C. Mayer, local agent of that company at Kansas City, was allowing E. M. Wilhoit, agent at Topeka, Kansas, money for information from railroad employees. He immediately wrote to Mayer that, if this was being done, it was contrary to instructions and must be stopped (*d*).

(*a*) Record, Vol. 13, p. 1095–1097.
(*b*) Record, Vol. 13, p. 1516, 1517.
(*c*) Record, Vol. 20, p. 476; Petitioner's Exhibits, 859, 860, 862–897, Vol. 21, pp. 2, 3–16.
(*d*) Record, Vol. 13, p. 1088, 1089.

II. *Use Made of Information of Competitors' Shipments.*

All of this information has been used by the Standard for statistical purposes. Part of it has been used by the marketing departments in their business of selling oil. The evidence is that the actual use of it by the marketing departments has consisted in sending a memorandum of competitive shipments to the local agent of the Standard in the territory into which such shipments were made, with a request for information from him why it was not selling that trade. The best proof of this is the written instruction to the agent accompanying such notice of shipments, of which Petitioner's Exhibit 738 is typical :

BALTIMORE, MD., Nov. 7, 1903.

" MR. I. G. WEST,

DEAR SIR :—We advise the following shipments of outside oil in your field. Please return this report promptly advising under head of remarks why we are not selling this trade.

MR. J. L. MINETREE.

F. A. Hancock.....Field.

(Here follows list of shipments.) "

The testimony of the heads of the marketing departments confirms this use of the information (*a*).

An agent in the field who knew his business would have no use for this information ; he would know already all the purchasers of oil in his field, whether they were buying from him or from others, and if not buying from him, he would know from whom they were buying and why (*b*). The information was sent, not to aid a competent agent in making sales, but for purposes of supervision, in order that the general manager might know whether the local agents and salesmen were doing their duty by the trade, and if not, might see that they did do it (*c*).

If there is any question of " unfairness " here, it lies between employer and employee, and not between the defendants and their competitors or the public.

(*a*) Record, Vol. 13, p. 1515, 1096.
(*b*) Record, Vol. 13, p. 1516.
(*c*) Record, Vol. 13, p. 1515, 1096.

III. *Securing the Countermand of Competitors' Orders by Means of Information of Their Shipments.*

It is conceivable, though barely conceivable, that a Standard agent or salesman, having information that a consignment of competitive oil was *on the way* to a designated merchant, might go to him and induce him to countermand the order and refuse to receive the oil when it arrived. But this would require that the salesman should have the information before the shipment arrived (*a*), and would involve a breach of contract on the part of the merchant and a consequent action for damages against him. It is not surprising, therefore, that there cannot be found on the record a single instance of this being done. Of all the Government's witnesses, just three, Davis and Pratt, discharged employees of the Standard, as to Kansas City, Mo., and Wofford, now a competitor of the Standard, as to Birmingham, Ala., could be got to say that an attempt had ever been made to use information of competitors' shipments for this purpose. Their testimony was merely the general assertion that they induced the merchant to countermand the order *if possible*, and no one of them could give an instance where it had been done (*b*). Davis' testimony relates to a period prior to 1888, and Pratt's to a period prior to 1892. It is significant that W. R. Stewart, general manager of that territory at that time and the man from whom Pratt got his instructions, *called by the Government*, testified that he never knew of any attempts to have competitors' shipments countermanded (*c*). A. J. Mapes, local agent over Wofford at Birmingham, who could have contradicted Wofford specifically, is dead; but E. L. Pauley, who succeeded Mapes at Birmingham in 1903 (*d*), found no such practice existing there (*e*). And it is certain that securing the countermand of competitors' shipments was contrary to the policy of these companies (*f*).

(*a*) Record, Vol. 13, p. 1096.
(*b*) Record, Vol. 2, p. 954, 959; Vol. 5, p. 2153.
(*c*) Record, Vol. 2, p. 995.
(*d*) Record, Vol. 12, p. 843.
(*e*) Record, Vol. 12, p. 846.
(*f*) Record, Vol. 13, p. 1067–1069, 1096

IV. *Cutting Local Prices at Destination of Competitive Shipments.*

There is no evidence whatever in support of the allegation of the bill that the Standard's local prices have been reduced to a ruinous figure, or reduced at all, at points of destination of competitors' shipments of which the Standard had information.

V. *Cutting Prices to Consignees of Competitors' Shipments.*

This is not charged in the bill. The hearsay testimony on the subject of Metzel, Mahle, Fehsenfeld and Cooper, witnesses for the Government with reference to the Baltimore Division of the Standard of New Jersey, was overwhelmingly contradicted by the evidence of thirty local agents and salesmen of that company covering the entire territory of the Baltimore Division for different periods from 1899 to date, whose uniform testimony was that they were never instructed or permitted to vary from the uniform schedule of prices given to them from headquarters, or to cut a competitor's price, and that they never did so (*a*).

On the other hand, the proof is that it has been these competitors in that territory who have practiced the method of securing business by cutting prices, and numerous instances thereof were shown (*a*).

Against the Standard of Indiana the evidence on this subject was that of W. N. Davis, Edward P. Pratt, E. M. Wilhoit, and William A. Morgan (*b*), all discharged employees of the company, all contradicted by L. J. Drake (*c*), and all referring to a period prior to 1899, excepting Morgan, who was special agent at a little station at Sedalia, Mo., from 1899 to 1901. Morgan was also contradicted by his written instructions, which he put in evidence (*d*). None of these witnesses could specify a single instance where a price had been cut.

As to all other Standard companies, there is no evidence

(*a*) Record. Vol. 13, p. 1154-1159, 1172-1180, 1186-1191, 1201-1203, 1312-1317, 1321-1326, 1346-1347, 1349-1354, 1364-1365, 1377-1380, 1389-1391, 1392-1395, 1401-1409, 1421-1423, 1425-1428, 1438-1440, 1444-1447, 1449-1453, 1470-1475; Vol. 5, p. 2309.

(*b*) Record, Vol. 2, p. 954, 959; Vol. 3, p. 1215, 1011.

(*c*) Record, Vol. 13, p. 1067-1074.

(*d*) Record, Vol. 3, p. 1012-1014, 1017-1018.

whatever in behalf of the Government on this subject, with the single exception of the testimony of Wofford, formerly an employee of the Standard of Kentucky at Birmingham, whose statements as to this were of the same character and value as on the subject of countermanding orders, and are not to be reconciled with the testimony of Collings (*a*), Pauley (*b*) and Cooke (*c*), all of the Standard of Kentucky.

FOURTH.

Operation of Bogus Independent Companies.

Pleading.

Petition XXV., Vol. A, p. 105: In substance, that the defendants have as an unfair method of competition operated bogus independent concerns to secure from competitors their custom, using these concerns to cut prices while maintaining prices on the larger part of their product sold in the same localities.

Facts.

I. Wholesale Marketing Concerns Operated by Defendants.

1. Purchased and Operated For the Good Will, etc.

A number of small marketing concerns engaged in selling oil to dealers, 19 altogether, purchased by various Standard Oil companies in the past, were operated for a time under the old name and organization, merely in order to get the benefit of the good will and to turn over the business to the purchaser to the best advantage (*d*), and also, in some cases where

---

(*a*) Record, Vol. 12, p. 896.

(*b*) Record, Vol. 12, p. 845, 857, 858.

(*c*) Record, Vol. 5, p. 2506.

(*d*) *Standard of New York*:—Maverick Oil Co., Funke Bros., Liberty Oil Co., and American Refining Co. (Record, Vol. 3, p. 1506-1512, 1513-1514); *Atlantic Refining Co.*: Denlinger Bros. and Oakdale Oil Works (Record, Vol. 2, p. 849-852, 856-857); *Standard of Kentucky*:—White's Golden Lubricating Co., C. P. Wagner & Co., Protection Oil Co., Star Oil Co., Brooks Oil Co., Vincennes Oil Co., Memphis Oil Co., and Dixie Oil Works at New Orleans (Record, Vol. 2, p. 715-728).

the purchased concern had an efficient organization for selling oil in barrels, to reach through it the trade preferring to buy oil in barrels, with the idea of finally converting that trade into tank wagon customers (*a*). As to some of these concerns, it appears that the Standard company which owned them did not advertise its ownership while operating them, and as to four of them, namely, the Peoples Oil Co. (*b*), Alabama Oil Co. (*c*), Dixie Oil Works at New Orleans (*d*), and the Vincennes Oil Co. (*e*), means were taken to prevent the Standard's ownership from becoming known, such as mailing reports to a post office box instead of openly to the Standard Oil Company. There is no evidence whatever as to any unfair method of operating these 19 concerns, and the only evidence as to the prices at which they sold their oil was that of Wooton and Wofford, witnesses for the Government, who testified that the Peoples Oil Co. (*f*), the Dixie Oil Works at New Orleans (*g*), and the Alabama Oil Co. (*h*), sold at the same prices as the Standard in the localities where they did business.

It appears that the Dixie Oil Works and the Republic Oil Co. were operated for four or five years, the former in the Baltimore Division and the latter in the territory formerly covered by the firm of Schofield, Schurmer & Teagle, whose business it purchased. The ownership of these companies by the Standard was not advertised or disclosed and their agents and salesmen were not informed of any relation between them and the Standard, and sometimes made in good faith representations that would follow from their ignorance (*i*). The Dixie Oil

---

(*a*) New American Oil Co. and Toledo Oil Works (Record, Vol. 13, p. 1552–1555), Peoples Oil Co. and Alabama Oil Co. (Record, Vol. 12, p. 901–902, 843–845), Troy Oil Works (Record, Vol. 12, p. 720–721).

(*b*) Record, Vol. 5, p. 2099–2100.

(*c*) Record, Vol. 5, p. 2151.

(*d*) Record, Vol. 5, p. 2109.

(*e*) Record, Vol. 5, p. 2521.

(*f*) Record, Vol. 5, p. 2100.

(*g*) Record, Vol. 5, p. 2108.

(*h*) Record, Vol. 5, p. 2151.

(*i*) Record, Vol. 13, p. 1354, 1277; Vol. 2, p. 980.

Works did principally a business of selling oil in barrels, and the Republic Oil Co. was operated to develop a business in the sale of high grade oils which the Standard did not handle (*a*). Some witnesses for the Government made general statements based on hearsay that the Dixie Oil Works had cut prices in the Baltimore Division (*b*), though no instances of this were given. But there is an abundance of competent evidence to prove that this company maintained the same prices as the Standard (*c*). In some places where the Dixie Oil Works did business, the Standard had no other competitor (*d*). There is no evidence of any price cutting or other alleged unfair method of competition on the part of the Republic Oil Co. during its existence, except one instance at Kansas City in 1902, when for about two months there was a price " war " between it and the National Oil Co., a subsidiary of the National Refining Co. A. H. Gardner, manager of the National Oil Co., testified that he offered to sell oil to anybody at ¼c. less than any price the Republic would make, and several witnesses testified to payments of rebates to customers by both these companies during this period. The evidence was conflicting as to which started the trouble, but the National claimed to have fought the Republic to a standstill (*e*).

(2) *Organized and Operated for Special Purposes.*

At different times between 1897 and 1900, the Standard of New Jersey purchased or equipped three small marketing outfits, namely, the Eureka Oil Co., the Argand Rfg. Co., and the Southern Oil Co., and operated them under the management of Louis Blaustein at different places in the Baltimore Division where the Standard's local agents were not showing satisfactory results. In each case, Blaustein was first sent to investigate and report any defects in the agent's conduct of the business, and then sent to operate for the purpose of stimulating the agent to greater efforts and to demonstrate whether more oil could be sold in that locality.

(*a*) Record, Vol. 3, p. 1143-1144, 1147-1150.
(*b*) Record, Vol. 5, p. 2319, 2408.
(*c*) Record, Vol. 13, p. 1239, 1247-1250, 1329-1333, 1110-1111, 1153, 1344.
(*d*) Record, Vol. 13, p. 1386-1387.
(*e*) Record, Vol. 2, p. 949-950; Vol. 3, p. 1151.

In each place where the Eureka Oil Co. or the Argand Rfg. Co. did business, the agent in question was subsequently either discharged or removed. At no time or place did any of these outfits sell oil at less than the Standard's price, with the single exception of the Southern Oil Co. at Winchester in 1900, where Cooper Bros. were under-selling the Standard and the Southern Oil Co. met their price. It could not compete successfully with Cooper Bros., and at the end of the year withdrew from Winchester (*a*).

By 1901, the three outfits above mentioned having served their temporary purpose had been discontinued, and from then until 1905, Louis Blaustein managed a tank wagon station for the Standard at South Baltimore under the name of the Eagle Oil Co. The name Eagle Oil Co. instead of Standard Oil Co. was used in order that he might give credit to the peculiar class of trade in that section of the City without invalidating the Standard's general rule to sell for cash (*b*). The competent evidence is that the prices of the Eagle Oil Co. during its existence were the same as were those of the Standard elsewhere in the City, except during a period in 1904 from about March or April to about September when its price was reduced ½c. below that of the Standard in order to hold its trade against cut prices initiated by the Crew-Levick Oil Co. The testimony of Louis Blaustein on this subject included the identification of a contract in writing between the Crew-Levick Oil Co. and one Crook, the proprietor of eighteen stores selling oil in South Baltimore, formerly customers of the Eagle Oil Co., in which the Crew-Levick Oil Co. engaged to supply these stores with oil for one year from January, 1904, at a price from ½ to ⅝c below the Standard's price, whatever it might be during that period (*c*).

3. General Conclusion from the Evidence.

Before the commencement of this suit—in most instances long before—all the above mentioned wholesale marketing concerns had been discontinued as separate organizations, and the various Standard Oil companies have since conducted all branches of their marketing business under their own names.

(*a*) Record, Vol. 15, p. 2434–2453, 2472–2473, 2542–2546.
(*b*) Record, Vol. 15, p. 2453–2455.
(*c*) Record, Vol. 15, p. 2461–2466.

There is no evidence that any coercive methods were used in the purchase of any of these concerns in the past, or that their former owners were restrained in any way from re-entering the business. The whole charge of the Government in connection with them comes down to the failure of the Standard company concerned to announce publicly its ownership, or, in a very few cases, to the concealment of its ownership. For this, as we have seen, there were differing business reasons in the different cases, none of which can be interpreted as an effort to exclude others from the trade, except incidentally in the sense in which all competition is an effort to exclude the competitor.

II. Retail marketing concerns operated by defendants.

1. *Can Peddling Departments.*

More than half of the so-called "bogus independent concerns" operated by the Defendants were retail organizations selling to consumers, and, with the exception of three insignificant peddling outfits run by the Standard of Kentucky for a special purpose hereinafter considered, and a single peddler named Farrell in the employ of the Standard of New York in the year 1899, all of these retail concerns were what are now known as the Standard's Can Peddling Departments.

The Standard companies that, so far as the record shows, engaged in the retail business, all commencing about the same time, namely, 1900–1902, were the Atlantic Refining Company, Standard of Ohio, Standard of Kentucky, Standard of New Jersey and Standard of New York. In some places existing retail concerns were bought, re-organized, equipped with the Standard's patent "non-fillable, non-spillable" one gallon cans and the business carried on under the old names; in other places, the business was newly organized. In all cases, originally, the business was carried on under various appropriate names other than that of the Standard, such as the Cleveland Oil Delivery, Home Oil Delivery, Domestic Delivery, Home Safety Oil and Gasolene Delivery, etc.

Of course, the allegations of the bill that the Standard operated "bogus independent concerns" to enable it to cut prices without reducing prices on the larger part of its product sold in the same locality, could not explain these separate retail departments. The explana-

tion of them by F. B. Squire covers the whole subject (*a*). They were an experiment in selling oil directly to the consumer, which, largely on account of the necessity of giving credit, proved a failure. Gradually a number of the equipments, as they wore out, were withdrawn (*b*) and all those that were continued, mostly in large cities, took the added name of "Standard Oil Co.", and became its recognized can peddling departments.

For the first few years in the history of this retail business, the fact that it was owned by the Standard was not advertised. No misrepresentation was authorized (*c*), but the employees in the business were not advised that it belonged to the Standard (*d*), and the reports of agents in charge of it were made to the Standard *indirectly* (*e*). The reason for this was to avoid antagonizing the Standard's tank wagon customers, namely, the store keepers and other dealers, who would naturally be jealous of any attempt on the part of the manufacturer to sell directly to the consumer (*f*).

These retail departments did not cut prices. Their prices were uniform to all the trade (*g*). They solicited all the trade indiscriminately (*g*). Their oil was obtained openly from the Standard's storage tanks, and there is no pretense that any misrepresentation was made as to the fact that they were selling Standard oil (*h*).

2. *Various Peddling Concerns.*

A voluminous portion of the Government's testimony is taken up with describing the methods of operating three little outfits belonging to the Standard of Kentucky called the Hamilton Oil Co., Paragon Oil Co., and the Banner Oil Co. or Kercher Bros., at Terre Haute, Ind., Decatur, Ill., and Springfield, Ill., respectively, and also at Vincennes, Ind., from about 1899 to about 1902. These concerns had at the most three

---

(*a*) Record, Vol. 13, p. 1523–1525.
(*b*) Record, Vol. 13, p. 1525.
(*c*) Record, Vol. 13, p. 1552.
(*d*) Record, Vol. 6, p. 3109–3110.
(*e*) Record, Vol. 6, p. 3115, 3124, 3125.
(*f*) Record, Vol. 13, p. 1558; Vol. 12, p. 981.
(*g*) Record, Vol. 13, p. 1105–1108, 1214, 1218, 1252–1253, 1532.
(*h*) Record, Vol. 13, p. 1104, 1262–1263.

peddling wagons and usually ran only one apiece, and their average sales were about 100 gallons a day (*a*). The witnesses for the Government were Charles Kercher, M. Maxon and John Shea, and there were numerous exhibits, most of which were unproved. The evidence was devoted to showing that these three peddling outfits were operated as independent companies, precaution being taken to conceal the fact that they belonged to the Standard, and that the manager of them was instructed to compete and did compete only with certain competitors of the Standard.

C. T. Collings explained that these concerns were operated to hold the business which various peddling concerns were taking from the merchants buying Standard oil (*b*). The competitor at Decatur and Springfield was the Merchants Tank Line Company, a concern owned by the National Refining Co. selling to the consumers at Springfield through Solle Bros., peddlers, and at Decatur through a peddler named Wagner. The peddlers at Terre Haute were O'Connell and Shea, whose wholesale business was operated there under the name of the Terre Haute Oil Co. (*c*). As it was not the intention of the Standard to compete with the stores selling its oil, its peddlers were instructed to solicit only the trade buying from the Merchants Oil Co. and its peddlers and from O'Connell and Shea (*d*). The competent testimony was that the prices at which these concerns sold oil averaged about 2c. above the wholesale prices to the stores and that they sold at a uniform price (*e*). They were operated as separate from the Standard, in order not to antagonize its tank wagon customers (*f*). Kercher, on cross-examination, admitted that they drove openly to the publicly located supply stations of the Standard for their oil and that it was common talk that they were owned by the Standard (*g*).

3. The suspicion of the Government that other peddlers, such as Cordner at Springfield, Mass. (*h*); Haynes Peddling

---

(*a*) Record, Vol. 12, p. 970.
(*b*) Record, Vol. 12, p. 921-922.
(*c*) Record, Vol. 12, p. 922, 924, 927.
(*d*) Record, Vol. 12, p. 921-922.
(*e*) Record, Vol. 12, p. 923, 1051.
(*f*) Record, Vol. 12, p. 981.
(*g*) Record, Vol. 6, p. 2964.
(*h*) Record, Vol. 12, p. 779-780, 790-791.

Wagons at Columbus, O. (*a*), or Moore at New London, O. (*b*), had any connection whatever with the Standard proved to be utterly unfounded. But, in the eyes of the Government, the mere fact that any pedler or other retailer was selling oil refined by a Standard Oil company has been sufficient to connect him with the Standard and make it responsible for his methods of competition.

The introduction by the Government of the subject of the Paragon Oil Co., a peddling concern operating in Delaware, proved a boomerang. The charge was that this company, because it bought oil from the Standard, was owned by the Standard (*c*), and that it was used to drive out of Seaford, Del., the Purse family doing a peddling business there under the name of the Seaford Oil Co. (*d*). The Purse family, three brothers, testified that the Seaford Oil Co. under their management belonged to the Crew-Levick Oil Co., and was operated by them as independent until they purchased it from the Crew-Levick Oil Co. (*e*); that they were driven out of Seaford, not by the Paragon Oil Co. or by the Standard, but by cut prices of the Red C Oil Co. (*f*); that they purchased the Paragon Oil Co. from one Mr. Horn, and in 1906 transferred their trade from the Standard to the Pure Oil Co. on account of a cut in price of 1c. a gallon for oil and 3c. for gasolene offered to them by the latter company (*g*).

FIFTH: Payment of Rebates on Oil Prices.

Pleading.

Petition, XXVI, Vol. A, p. 107: In substance, that, in order to hold customers or secure customers from competitors, the defendants have, as an unfair method of competition, paid secret rebates or deductions from the price to purchasers of oil, on condition that they purchase their supply exclusively from the defendants.

(*a*) Record, Vol. 13, p. 1533–1534.
(*b*) Record, Vol. 13, p. 1535.
(*c*) Record, Vol. 5, p. 2412; Vol. 13, p. 1219–1220.
(*d*) Record, Vol. 5, p. 2356.
(*e*) Record, Vol. 13, p. 1218.
(*f*) Record, Vol. 13, p. 1279–1283, 1307.
(*g*) Record, Vol. 13, p. 1307.

Facts.

The payment of rebates on oil prices is one method of making special prices to individuals which are not open to all the trade, and, when the net price after payment of the rebate is lower than the price of the competitor, it is a method of cutting prices.

A system of underselling the competitor by means of special prices is characteristic of small marketing concerns that, unnoticed, "shop around" for customers, recouping from one purchaser what they may lose on sales to another, or expecting to recoup from a customer later what they may lose at first on sales to him at a special price made for the purpose of gaining his trade. The owner of a large business like that of the Standard, dependent for success upon maintaining a large volume of trade, aside from any question of unfairness, cannot afford to make discriminations in price among its customers; and it is sufficiently clear from the evidence in this case as a whole that the allowance of rebates, or special prices in any form, as a method of competition, cannot be attributed to the Defendants. Take as an example the Standard of Indiana, which does about one-third of the total merchandising business done by all the Standard Oil companies. The only evidence produced by the Government on the subject of rebates paid by the Standard of Indiana in any locality from the time of its organization to date is that of W. H. Hawkins, who testified that he, as superintendent of tank wagons, instituted at one of these towns prior to 1897 a system of rebates, whereby, if a person were not buying from the Standard, he would offer him a sufficient rebate to secure the trade. Asked where he got instructions for that, he answered, "Well, L. J. Drake was the general manager." (*a*) He was discharged by the Standard in 1897, for what cause he does not know (*b*). L. J. Drake denied specifically that he ever instructed or authorized Hawkins to pay rebates or that the paying of rebates was ever practiced by the Standard of Indiana (*c*).

(*a*) Record, Vol. 3, p. 1244.
(*b*) Record, Vol. 2, p. 990-991.
(*c*) Record, Vol. 13, p. 1069-1070.

Most of the Government's evidence as to rebates was that of C. J. Castle, all referring to a period prior to 1898. He identified Petitioner's Exhibit 829 as a report of the special arrangements for rebates made by him while in the employ of the Standard of Ohio, and described them in detail. He said that he was left largely to the exercise of his own judgment in making these arrangements (*a*). F. B. Squire, Vice-President of the Standard of Ohio, and in immediate charge of its marketing business, testified that Castle had no authority to make arrangements for rebates and that he proved incorrigible in that regard and was discharged for it (*b*).

In the exceptional instances to be met with in the record where rebates or other special prices have been made by an agent of any Defendant company, the concession was almost invariably ½c below the tank wagon price, and was made to meet a cut price offered by the competitor. The bill does not allege that by this means the defendants have attempted to drive out competitors, but only that they have endeavored thereby to hold or secure customers; and it is obvious that special prices of this character could not have any other purpose or effect.

The allegation of the bill that rebates were paid by the Defendants on condition that the dealer should purchase his supplies exclusively from them during the period covered by the sales in connection with which the rebate was given, was inserted, we suppose, in order to attribute to rebates some function in restraint of trade which, considered merely as special prices, they would not have. But there is no evidence in this record of a rebate given or promised upon such a condition. Also, the record will be searched in vain for any appreciable number of instances where executory contracts of sale made by any Standard agent have contained provisions obligating the buyer to deal exclusively with the Standard for any period of time. The Standard has not even made a practice of selling given quantities of oil for future delivery. Not one-hundredth of one per cent. of its entire sales are executory contracts of

---

(*a*) Record, Vol. 6, p. 3069.
(*b*) Record, Vol. 13, p. 1518–1519.

sale. Its marketing business is, and always has been, a cash business (*a*).

SIXTH: Miscellaneous subjects not specified in the pleadings.

In the record in this case there is to be found, on the subject of so-called unfair methods of competition, not only the testimony of witnesses called in person on behalf of the Government, but also testimony read into the record from all the records of equity cases, criminal trials and proceedings before commissions, where Standard Oil or any of its companies has been a party or an object of investigation. We have here, therefore, the result of investigations, not only in preparation for this case, but in preparation for all such trials and proceedings in the past, and we may assume that all that can be said in disfavor of the Standard Oil Company is on the record here.

Here, at any rate, is all the "tittle-tattle" of the trade. Every competitor who has lost a customer, every peddler who has had a squabble with a tank wagon driver, has always been welcome to the witness stand, there to air his grievance, whether or not it appears to have been connected in any sense with any Standard Company. Every ex-employee of the Standard has been given the chance to even matters with his former employer by telling, under oath, how he substituted sharp practice for honest salesmanship and then wondered that he, who now considers that his practices were representative of Standard methods, should have been discharged.

The result is a series of disconnected incidents, varying as widely as human nature, which cannot have been introduced in evidence with any hope of establishing a method of any kind. Most of the testimony as to these incidents is incompetent. Much of that which is incompetent has been met and answered in the evidence. If we eliminate those supposed occurrences which are not supported by any competent testimony and those which ante-date the year 1890, what remain seem, for the most part, too trivial for serious consideration.

(*a*) Record, Vol. 12, p. 692, 933; Vol. 13, p. 1079, 1588; Vol. 15, p. 3429; Vol. 17, p. 8497, 8581.

But trivial or important, it is well to observe the significant fact that practically every charge that is definite enough and relative to a time recent enough for full and proper investigation has been *entirely disproved or explained.*

Thus, the Government undertook to prove at length and with much circumstance a charge that had been given wide circulation in the press to the effect that an agent of the Standard of New York had on one occasion in 1902 falsely measured a competitor's barrels of oil by using for that purpose two 5-gallon cans that held more than five gallons (*a*). *The defendant put the two 5-gallon cans in evidence,* and never were two measures more exact (*b*).

Another story that had gone uncontradicted since told by F. L. Hibbs before the Interstate Commerce Commission, was that the salesmen of the Standard at Peoria, Ill., 1902-1905, were instructed to make, by various specified means, fraudulent tests of oil for customers. The testimony, read into the record here, was not only completely disproved by the evidence of witnesses no longer in the Standard's employ (*c*), but was rendered ridiculous when it appeared that Hibbs' employer was sending out thousands of circulars every year expressly instructing the customers in that district in the very matters as to which Hibbs testified he was directed to deceive them (*d*).

The purchase of the Peoples Oil Co. from the " widow Jones " was a would-be pitiful episode that is typical. C. T. Collings was cross-examined about it as follows (*e*) : " Q. Didn't he (Kercher) say that she (Mrs. Jones) didn't want to sell out? A. I have never heard of such a thing. Q. Didn't she break down and tell him that she had to have the business ; that her husband had died, that she had a family to support and had to have the business ? A. I never heard of such stuff. Q. You were trying to drive that woman out of Mobile ? A. Oh, that is all rot. Q. We will see whether it is or not. A. Well, you prove any such stuff as that."

(*a*) Record, Vol. 4, p. 1912-1914, 1919-1923.
(*b*) Record, Vol. 12, p. 744-747, 772-777.
(*c*) Record, Vol. 12, p. 1008-1015, 1020-1027.
(*d*) Record, Vol. 12, p. 1014, 1026.
(*e*) Record, Vol. 12, p. 974.

Mrs. Jones's view of the transaction is disclosed in a letter dated April 4, 1908 (*a*), from her to Capt. Morris, an agent of the Standard who bought the property from her. It is in part as follows:

> "Yesterday I received the enclosed paper from a friend in Mobile, and I naturally feel very much wrought up over it. * * * Somehow I feel we ought to know the author of all this mess and make the Register Co. print a denial of the same. I feel that it would be only justice to both myself as former owner of the Peoples Oil Co. and to the Standard Oil folks as well. * * * Would you mind writing the paper a denial that I was indebted to the Standard and forced out of business? * * * I hate for all my friends to think I am 'busted,' for I was never better off financially than when I sold and owed no man a penny either."

Standard Oil's marketing departments are not served by a host of angels, but by human beings. Like other human beings they are liable to err. They are, however, representative men, and in a very real sense, picked men. The thousands of employees are carefully chosen; they are paid fair wages and are given regular employment, through good times and through bad. The system of promotion among them is strictly a merit system. This has the defects of its virtues, in that it sometimes leads to overzealous acts on the part of agents and salesmen, of which the Standard has had to bear the burden.

It has also borne the burden of the acts of another class of men, fortunately few in number, whom no large aggregation of people can hope entirely to escape. These are men, who, reading evil into the simplest actions, decry it loudly, while violating in their performance the dictates of common honesty and decency. There are not lacking some precious examples of this manner of man in the record in this case.

E. C. Armstrong, a witness for the Government, when in the employ of the Standard of New Jersey, was shocked in his moral sense because that Company received reports of competitors' shipments. But on cross-examination he testified (*b*): Q. During what months were you ill while you were in the em-

---

(*a*) Deft.'s Exh. 92½, Vol. 18, p. 253.
(*b*) Record, Vol. 5, p. 2266.

ploy of the Standard Oil Co.? A. I think it was May, June, July and August. I think of the year 1902. * * * Q. Did your salary go right along? It did. Q. They paid your salary the four months you were at home? A. Yes, sir. Q. Different men connected with the Standard called upon you from time to time to ascertain the condition of your health? A. Simply one man called, as I recall. Q. And during all those four months your salary went right along? A. That is right. Q. While you were ill and did no work? A. That is right? *Q. Within three months after that you stole those papers? A. That is probably right.*"

E. N. Wootten, a witness for the Government, viewing the subject from his own high moral plane, was of the opinion that "the evil example set by the Standard Oil Co. has very largely permeated the commercial world"; but did not himself scruple to filch a file of correspondence from the office in which he worked for future use in dealing with or against the Company by which he was then employed (*a*).

These witnesses there are, and others like them, whose testimony is in the record. They are utterly untrustworthy, not only because they stole papers, or because they have distorted the truth, or because of the practices which led to their discharge, but because, while in a position of trust, with no cause for complaint or motive to revenge, they deliberately planned and executed the means by which they might, as they believed, betray the confidence of their employer. No doubt their testimony will receive the degree of consideration which it deserves.

(*a*) Record, Vol. 5, p. 2131-2135.

CHAPTER XVII.

Railroad Freight Rates.

FIRST. THE CONTENTION OF THE GOVERNMENT WITH REGARD TO RAILROAD FREIGHT RATES, IS BROADLY, THAT :—

1. The defendants have restrained and monopolized interstate and foreign commerce by means of preferential freight rates, such preferences being in open and published rates as well as in secret and unpublished rates, both state and interstate; and that,

2. There has been a conspiracy between the defendants and the officers and agents of the various railroads of the United States from 1882 to 1906 through which the defendants have obtained such rates (*a*).

3. It is also contended that the defendants have been guilty of certain specific violations of the Interstate Commerce Law (*b*).

Such alleged specific violations of the statute, are hereafter considered in detail. To these and to the Government's broad contention in this regard, Defendants first reply generally :

I. THE RIGHTS OF A SHIPPER :

1. At common law, whatever obligation, if any, the *carrier* may have been under not to discriminate in its charges for transportation, the *shipper* had the right to apply for and use such rate as he could get (*c*). The case of *West. U. Tel. Co. v. Call Pub. Co., 181 U. S., 92*, relied upon by the Government as establishing a contrary doctrine, relates at most to the obligation of the *carrier* not to discriminate and does not question the right of shippers in the absence of statute, to use whatever rate might be secured, or, to take an extreme case, the right even to accept passes for free transportation, the practice so commonly indulged in before its prohibition by various state and federal laws, however unwise in principle the custom may have been. The shipper's right to use such rate as he can get still prevails as to intrastate transportation, except as it

---

(*a*) Petition, Vol. A, p. 60.

(*b*) Petition, Vol. A, p. 61-96.

(*c*) Beale & Wayman R. R. Rate Reg. § 717; Parsons v. C. & N. W. Ry. Co., 167 U. S. 447.

may be affected by state laws with which this suit has no concern, and, as to which, so far as any violation thereof is concerned, this record is silent.

2. Prior to the amendment of 1903, commonly known as the Elkins Act, the Interstate Commerce Law did not create any offense against the shipper except that for practicing some fraud such as false weighing, or false representation as to character of freight; and there is admittedly no proof in this case of any such practice. Any violation of the law, therefore, must have been subsequent to the Elkins Act and with regard to interstate traffic.

II. The impossibility of such a general conspiracy as is charged, is shown in that :—

1. (A) In the year 1904 there were in the United States more than 1200 separately operated railroad corporations; and the manner in which freight rates are made is such that a conspiracy, in respect thereto as charged, would necessarily involve thousands of men, an impossible number (*a*).

(B) All the freight of all the defendants in all the States in the same year was less than one-half of one per cent. of the total freight tonnage (*b*); and it is not conceivable that the officers of railroads generally would form a conspiracy with regard thereto. Moreover a large proportion of this one-half of one per cent. was handled on class rates, a manipulation of which would necessarily have affected all commodities in the same class. *It is not contended that the Standard received any rebates after the adoption of the Interstate Commerce Law in 1887.*

(C) Wherever there is a Standard refinery or shipping point, with the single exception of Whiting, Ind., there are one or more independent refiners always shipping to the territory available therefrom at the same rates as those used by the Standard (*c*); and the defendant is admittedly the largest shipper. A conspiracy to maintain high rates from any point from which both the Standard and independents make shipments would necessarily have harmed the Standard, the largest shipper, more than any independent. To illustrate: There is a

---

(*a*) Record, Vol. 14, p. 1592.
(*b*) Record, Vol. 14, p. 1593; Vol. 18 p. 273.
(*c*) Record, Vol. 14, p. 1606; Vol. 19 p. 662.

Standard refinery, and one or more independent refiners, at Cleveland, O. If the railroads leading out of Cleveland made high oil rates from that point to the territory available therefrom, at the instance of the Standard, in order to discriminate against independent oil dealers, as the Government charges, such high rates would have harmed the Standard, admittedly the largest shipper, more than any independent.

(D) Moreover, the number of tank cars in use by the Standard and by others for the period of ten years prior to 1908 (such cars being the usual means of transporting the liquid products of petroleum) shows that during that time *transportation of such products by independents has increased much more rapidly than by the Standard* (*a*).

(E) The construction of freight tariffs and the quoting of rates are not exact sciences. Prior to the enactment of the Hepburn law and during the period of the supposed discriminations here in question, railroads generally were not so careful in the issuing of tariffs and the quoting or observance of rates as they have since become; and the Interstate Commerce Commission was not then so strict in its requirement of an accurate compliance with the provisions of the statute. At that time great confusion prevailed; and mistakes in rates were consequently inevitable and very numerous (*b*), as is well illustrated by the fact that *a witness for the Government in this case made two hundred and twelve mistakes in attempting to quote two hundred and sixty seven rates* as having been in effect in the year 1904 (*c*).

(F) In all the years that the Interstate Commerce Commission has had jurisdiction to condemn discriminatory rates, *no independent refiner* (with a single exception where the petition was dismissed without action) *has ever appealed to that tribunal for relief from discriminatory oil rates*, but it remained for the Bureau of Corporations to discover, and the Government to complain of, such supposed discriminations.

2. Whatever irregularities, if any, are to be found in the several instances of supposed discriminations, pointed out by the Government, arose out of the looser practices in this re-

---

(*a*) Record, Vol. 14, p. 1598 Vol. 18, p. 274.
(*b*) Record, Vol. 14, p. 1612; Vol. 18, p. 381.
(*c*) Record, Vol. 18, p. 364, 366-9.

gard that prevailed generally among railroads, the proofs as to such matters showing only that the Standard permitted the railroads to transport its property in the same manner and pursuant to the same methods that all carriers formerly regarded as legal and which were applied to all shippers.

The Government admits that there has been no wrongdoing or violation of law by the Defendants with regard to railroad matters since the passage of the Hepburn Law in 1906, and there is no proof in regard to any specific matters of complaint in this respect subsequent to 1905; yet, because, under the drastic provisions of the Hepburn law, the Interstate Commerce Commission is now compelling a much stricter technical compliance with the statutory requirements concerning rate schedules, the Government, in 1910, in the light of greatly altered conditions, seeks to condemn the Standard because of the irregularities and carelessness which, as the Commission has itself repeatedly recognized, were for many years universal among railroads. Thus, in its report of 1908, the Commission says (*a*) (italics ours):

> "No one not directly interested in or connected with this work can appreciate the *chaotic condition of carriers' tariffs* at the time the amended act became effective (The Hepburn Law.) * * * *Lax methods on the part of carriers in years gone by* resulted in the practical abandonment of many rate schedules and in adopting others in lieu thereof without properly cancelling from the file of the Commission the schedules so discarded. * * * Under the former practices and the tariff conditions which grew up thereunder there were multitudes of instances in which overcharges were claimed by shippers and in which parts of the sums paid were subsequently refunded by the carriers."

Such an attitude on the part of the Government is neither reasonable nor just.

Of course, an unintentional violation of the statute arising from a universal misconstruction thereof by carriers would not constitute an offense under the Interstate Commerce Act, as it is now established that intent is an essential element in a viola-

---

(*a*) 22nd Annual Report I. C. C., p. 13-14.

tion of the Act by a shipper (*a*).

An examination of the several supposed instances of violation of the law of which the Government complains, reveals that whatever advantages, if any, the Standard may have had in freight rates were due not to conspiracy or favoritism, but to the location of its refineries and to the superior intelligence and greater diligence of its traffic department. The first of such supposed violations to be considered is that relating to:

SECOND: THE CHICAGO-WHITING-EAST ST. LOUIS RATES.

1. *It is now judicially established that the rates which the Standard used on its shipments from Whiting to East St. Louis were not illegal.*

(A) The largest refinery West of the Atlantic seaboard is that of the Standard, at Whiting, Ind. The corporate limits of the city of Chicago extend to the Illinois-Indiana state line. The Whiting refinery is about one and one-half miles over the state line in Indiana (*b*). This refinery was completed in 1890 and for the period of about fifteen years thereafter made shipments of vast volume to East St. Louis all at the rate of 6c. per hundred pounds. Chicago and East St. Louis being in the same state, it was not necessary to file tariffs naming rates between those two points with the Interstate Commerce Commission; and no railroad at that time so filed any tariffs that merely made rates between such points. It was the common custom of the Chicago railroads to give to the outlying towns surrounding Chicago, whatever rate prevailed from Chicago. *This custom prevailed as to all shippers and with respect to all kinds of freight.* The manufacturing towns in northwestern Indiana, that were included within this Chicago Switching District, such as Hammond, Whiting, East Chicago and Grasselli, were thus given the advantage of Chicago rates, *so that any rate from Chicago applied automatically from those Indiana towns* (*c*).

(B) The 6c. rate was in effect over the Alton, the Burlington and the Eastern Illinois roads; and the Standard as a matter of fairness divided its traffic for a great many years, about equally between them (*d*). The same rate was at one time

---

(*a*) Standard Oil Co. v. U. S., 164 Fed. 376, 379, 390.
(*b*) Record, Vol. 14, p. 1744; vol. 18, pp. 400, 404.
(*c*) Record, Vol. 14, pp. 1742–57.
(*d*) Record, Vol. 14, p. 1760.

in effect over the Santa Fe road and its St. Louis connection, and also over the Illinois Central road; and shipments were made under it by an independent oil dealer to St. Louis. These rates were considered state rates by all the roads issuing them, except the Eastern Illinois road, and, therefore, the tariffs naming them were not filed with the Interstate Commerce Commission (*a*). The Eastern Illinois road, however, issued its tariffs so that by their terms they applied from Whiting, and *filed them with the Commission* (*b*).

(C) Mr. E. Dana Durand, who conducted the Government's investigation of petroleum freight rates and testified as to most of the rates which the Government relies upon, admitted, as a witness for the Government in this case, *that the last tariff of the Eastern Illinois road naming this 6c. rate was regularly filed from 1895 to 1906* (*c*). The Government contends, however, that the rates were used on interstate shipments and that the tariffs of the other roads should also have been filed with the Commission. In later years, the roads did file with the Commission tariffs called "Application Sheets," which provided merely that any rate in effect from Chicago would also apply from all points in the Chicago Switching District, including Whiting and the other Indiana points mentioned (*d*); and the various roads, some of them by advice of counsel, considered such filing of the Application Sheet a filing with the Commission of the rate (*e*). *It is uncontradicted that it was the universal custom of all roads leading out of Chicago to apply to these Indiana points, the rates in effect from Chicago, regardless of whether they were state rates not filed with the Commission, or interstate rates and so filed, and that this custom prevailed as to all kinds of freight and with respect to all shippers.*

(D) The Government contends that the lawful rate from Whiting, one and one-half miles outside of the corporate limits of Chicago, was 18c., although it admits that no one ever made any shipments at that rate and concedes that 6c. was the lawful rate from Chicago to East St. Louis. There was a tariff

---

(*a*) Record, Vol. 14, p. 1762.
(*b*) Record, Vol. 10, p. 1529–30.
(*c*) Record, Vol. 4, p. 1640.
(*d*) Record, Vol. 18, p. 405–505.
(*e*) Record, Vol. 16, p. 2808, 2866.

issued by the Chicago & St. Louis Traffic Association, an association of the various railroads extending from Chicago to East St. Louis, that named no commodity rate on petroleum oil, but did name a fifth class rate between Chicago and East St. Louis of 18c. per one hundred pounds. This tariff has a reference upon it to the "Illinois Classification"; and there was a classification issued by the Railroad and Warehouse Commissioners of the State of Illinois that put the products of petroleum in the fifth class (*a*). In 1899 the tariff naming the Chicago-East St. Louis rates was consolidated with the tariff that named rates from Milwaukee and other points in Wisconsin to East St. Louis, *which were interstate, and for that reason* was filed with the Interstate Commerce Commission (*b*). So the Government contends that after about the year 1902 (the date of the filing with the Interstate Commerce Commission of the Application Sheets of the various railroads), the 18c. rate became and was the only lawful rate for the transportation of petroleum oil from Whiting to East St. Louis.

(E) In 1906 the Government secured ten different indictments against the Standard Oil Company (of Indiana) on account of shipments made from the Whiting refinery. Two of those were disposed of in favor of the defendant, on demurrer (*c*). Out of the remaining eight the Government selected as the case to be first tried, the one concerning shipments over the Alton road from Whiting to East St. Louis and involving the rates above referred to. This case resulted on the first trial in a fine of $29,240,000. (*d*), was subsequently reversed by the Circuit Court of Appeals, (*e*) *certiorari* denied by this court *(f)*; and upon retrial the court directed a verdict of *not guilty, because the tariffs which the Government relied upon did not establish an 18c rate* for the reasons set forth in the opinion of the court of Appeals, the evidence on the retrial in no way curing the defects there pointed out (*g*). *It is therefore, now judicially established that this suppposed 18c, nominal, class rate was not even technically any rate at all.* Although the other indictments were returned more than three and

---

(*a*) Record, Vol. 4, p. 1602.
(*b*) Record, Vol. 16, p. 2896.
(*c*) 148 Fed., 719.
(*d*) 155 Fed., 305.
(*e*) 164 Fed., 376.
(*f*) 212 U. S., 579.
(*g*) 170 Fed., 988.

one-half years ago, the Government has not seen fit to bring any of the remaining cases to trial.

2. Shippers could never have understood, nor the Alton or Burlington roads have intended, that there should be an 18c oil rate between Chicago and East St. Louis, and the contention of the Government in this regard is purely technical, as appears from a consideration of other facts:

(A) The 6¼ cent rate over the Chicago & Eastern Illinois Road (by virtue of certain terminal charges, the equivalent of the 6c rate over the Alton and Burlington roads), (*a*) was unquestionably the regularly filed rate and lawfully used (*b*). *The Standard made about one-third of its shipments over this road, and might have made all of the shipments by that route at the same cost.* (c) There was, therefore, nothing to gain and *no motive for violating the law* by giving one-third of its shipments each to the Burlington and Alton railroads.

(B) In making shipments over the Alton and Burlington roads, the Standard could have transported the oil at a merely nominal expense, through the pipe line which it maintained during all this period, from Whiting across the state line to Chicago and made the shipments from there at the admittedly lawful interstate rate of 6c (*d*).

(C) Rates were in effect on other commodities between the same points during the period in question as follows: (*e*)

Vinegar	6c	Flour	6c
Copperas	6c	Brick	4½c
Wheat and other grain	6c	Hard Coal	5c
Glucose in tanks	6c	Asphaltum	6c
Whiting	6½c	Cement	5c
Cotton seed oil, in tank cars	8c	Linseed Oil, in tank cars	8c
Crude glycerine, soap and lye, in tank cars	8c	Corn meal, mill feed, bran, and middlings	7c
		Beans, dried	6c

The Government's freight tariff expert and experienced railroad man, *Mr. Schindler, admitted* as a witness in this case, *that 18c. per hundred pounds on petroleum and its products, between these points, would have been an unreasonable rate* (*f*).

(*a*) Record, Vol. 14, p. 1761.
(*b*) Record, Vol. 4, p. 1640.
(*c*) Record, Vol. 14, p. 1760.
(*d*) Record, Vol. 14, p. 1800.
(*e*) Record, Vol. 4, p. 1601, Tariff 24 C. & St. L. T. A.; Vol. 19, p. 610; Vol. 18, p. 495.
(*f*) Record, Vol. 4, p. 1760.

(D) The oil rate from Chicago through East St. Louis to Evansville, Ind. was 11c. per cwt; (*a*) the rate from Toledo, an important refining point, through Whiting and Chicago, to East St. Louis was 17c. per cwt; (*b*) and the rate from Chicago to Memphis, Tenn., was only 18c. per cwt. (*c*)

3. *Supposed Secrecy of the 6c. Rate.*

Although the 6c. rate was used for about fifteen years and in effect at one time or another over, or in connection with, eight separate railroads, the Government contends that it could not have been rightfully used by the Standard because, as Counsel conceive, the railroads endeavored to keep the rate secret. They so contend, because:—

(A) Tariffs of the Alton and Burlington railroads, pursuant to the custom of these roads with regard to all tariffs naming rates from Chicago to other points in Illinois, were not filed with the Interstate Commerce Commission. *The tariff of the Eastern Illinois railroad, however, as we have seen, was so filed;* and we assert as a proposition of law, *that a rate that is regularly filed with the Interstate Commerce Commission, as required by statute, cannot be a secret rate.*

(B) The Alton and Eastern Illinois roads, instead of having the local station agent at the little outlying junctions of Chappell and Dolton (where the belt line from Whiting connects with these roads), collect the charges each day on each car of oil, as might perhaps have been done on a single shipment, found it more convenient to make such collections semi-monthly through the general offices of the railroads; and without any rebate or other evidence of secrecy between the carrier and the shipper, a bill for the actual amount due at 6 c. was (in the usual way) presented and paid (*d*). The Burlington, however, whose physical connection with the Belt Line for these shipments was through the city proper, so that the shipments were handled at the Burlington's Chicago office, did waybill the shipments and collect its charges in the usual way for small or single shipments (*e*).

(*a*) Record, Vol. 4, p. 1517; Vol. 17, p. 3532.
(*b*) Record, Vol. 4, p. 1759.
(*c*) Record, Vol. 4, p. 1760.
(*d*) Record, Vol. 10, p. 1513; Vol. 5, p. 2429-31.
(*e*) Record, Vol. 10, p. 1528.

(C) The Alton had a bungling method of book-keeping, in making its collections through the general office ; no attention was paid to the rate that the Chappell agent actual inserted in the *way-bills*, which are railroad documents used in connection with the transportation of cars and *which never come to the knowledge of a shipper ;* but the billing clerk in making out the way-bills inserted at one time a rate of 10 c. shown in an old tariff that was not filed with the Commission and which made various rates between many points in Illinois (*a*) and at another the supposed 18 c. class rate above referred to, (the local office and general office afterwards adjusting their accounts), all of which was admittedly a mere matter of railroad book-keeping of which the Standard knew nothing (*b*). *The Alton tariff and rate clerk, however, in charge of these tariffs, testified that the rate was in no sense a secret one, that the tariffs were kept in the same manner as all state commodity tariffs, accessible to the same clerks, and that the 6 c. rate would have been quoted to any shipper* (*c*).

(D) Mr. Durand, who was chief assistant to counsel for the Government throughout the preparation for, and the hearings in, this case (*d*) testified over objection that a representative of the Alton as well as one of the Eastern Illinois, had stated to him that the rates were semi-secret, the intention being to conceal them from other carriers, rather than from shippers. Such conversation so testified to with the Eastern Illinois representative was with an official who had been with the road but a short time and who had nothing to do with the origin or the use (during most of the time in question), of this particular rate (*e*), which, as we have seen, was shown in a tariff actually filed with the Commission. With regard to the Alton, the man with whom Mr. Durand said he had the conversation, denied that he had ever seen Mr. Durand before the hearings in this case (*f*).

Surely, therefore, the Standard is not to be condemned for having used a rate that was for many years on file with the Interstate Commerce Commission because, while it did pay charges to one of the roads concerned in the usual way in

---

(*a*) Record, Vol. 9, p. 1475.
(*b*) Record, Vol. 20, p. 464-5.
(*c*) Record, Vol. 16, p. 2871-2.
(*d*) Record. Vol. 20, p. 474-5.
(*e*) Record, Vol. 4, p. 1616, 1643.
(*f*) Record, Vol. 16, p. 2833.

which even charges on small shipments are collected, the charges of the other roads were paid through the general office of the railroad, a not unusual and much more convenient way for the collection of charges on a large volume of continuous shipments, particularly where the rate used is testified to by the rate clerk of one of these roads as in no way secret and as available to any shipper; and still more surely is there no ground for condemnation for using such rates after it has been *judicially established that there was no other rate to be used.*

THIRD: SUPPOSED DISCRIMINATORY RATES INTO THE SOUTH.

1: The 13c. Rate from Whiting, Ind., to Grand Junction, Tenn.

1. The Government complains further that the rates used by the Standard on its shipments from Whiting into the Southern States were illegal and also that they were discriminatory as compared with the rates from more eastern refining points (*a*). During the period in question the railroads leading from states north of the Ohio River and, with their connections, extending into the South, did not generally make through rates, except to Mississippi River and Gulf points; but the rates commonly in use upon all kinds of freight were the local rates to the Ohio River gateways, plus the rates from such gateways to southern destinations (*b*). There is no reason why there should not have been through rates between these two territories, except that the corporations (different in most instances) operating such roads had not agreed upon them. In 1896 the Illinois Central, which did have its own rails into the south, put in a through rate of 13c. per cwt., from Whiting, via. Cairo, one Ohio River gateway, to Grand Junction, Tenn., which is the junction of the Illinois Central and the Southern railways, some fifty miles east of Memphis. The following year the Illinois Central, having acquired a connection between its main southern line and Evansville, Ind., which is another of the Ohio River gateways, joined with the Eastern Illinois and with the Evansville & Terra Haute railroads, extending from Chicago to Evansville, in putting in the same rate of 13c. to Grand Junction (*c*). Within a period of about two years, at least

(*a*) Petition, Vol. A, p. 61.
(*b*) Record, Vol. 4, p. 1660.
(*c*) Record, Vol. 4, p. 1568, 1569; vol. 19, p. 520, 530.

nine different documents pertaining to these two 13c. rates, were filed with the Interstate Commission (*a*).

2. There was also in effect an oil rate from Chicago to Evansville, issued by an association of the railroads between Chicago and the Ohio River, of 11c. per one hundred pounds (*b*). There were also rates in effect from Evansville to various southern destinations. The cost of transportation from Whiting by way of Cairo, or Evansville, to southern destinations, if made up of the local rates to and beyond the Ohio River, was greater than the 13c. rate to Grand Junction, plus the charges of the Southern Railway from that point to the same destinations.

The Government contends that the Evansville combination should have been used and that the 13c. rate, *although repeatedly filed with the Interstate Commerce Commission*, was secret and illegal (*c*). Counsel so contend because the Eastern Illinois road, in issuing the way bills of these shipments, for a considerable period of time, did not show the rate. The official of the railway south of the Ohio river at whose instance the practice of not so showing the rate was inaugurated, *testified in this case that the Standard had nothing whatever to do with the omission of the rate*, but that this method was inaugurated by him for the purpose of concealing the rate from the Louisville & Nashville Railroad, which extends from Evansville into the south and was a very strong competitor of his road. He further said that oil and some other commodities were not included in the Southeastern Mississippi Valley Association tariffs, that consequently he did not know what the Louisville & Nashville oil rates were, and preferred, if he could, to keep them from knowing his (*d*). It does not appear that the Standard ever knew of his methods of way-billing the freight; and, *as way bills never came to the knowledge of the shipper, in the ordinary course of things*, it could not know.

3. The Government also contends that various memoranda found in the files of the Eastern Illinois road, read into the record over objection, in no way proved or verified, except as having been so found, and *offered not as a part of the Government's original case, but withheld until rebuttal, so that the de-*

(*a*) Record, Vol. 14, p. 1774-6.
(*b*) Record, Vol. 4, p. 1517.
(*c*) Petition, Vol. A, p. 63.
(*d*) Record. Vol. 14, p. 2082-3.

fendants have had no opportunity to reply thereto, seem to indicate that certain traffic officials of the Standard had applied to the railroads to secure the 13c. rate (*a*). These memoranda, if proved, show only that the Standard applied for rates in the same way that all shippers of any consequence always have done; and we do not consider this 13c. rate further than to say that, having been regularly filed with the Commission, *it could not be a secret rate and was one which a shipper might lawfully use.*

II. *The Southern Railway rates:*

1. The Memphis & Charleston Railroad, extending from Memphis through Grand Junction, and with its southern connections into the south generally became a part of the Southern Railway in the early part of 1898 (*b*). For many years this road with its northern connections had in effect through rates from Evansville and other Ohio River gateways into the South. Shipments reaching Grand Junction on the 13c. rate were moved by the Southern Railway from that point to destination on rates that were the substantial equivalent of that road's share or division of the through rate from Evansville, *this road thus receiving its full division of such through rates* (*c*). The documents showing the rates thus used were not filed with the Interstate Commerce Commission. *It does not appear in the proofs, however, nor is it averred in the petition* (*d*), *that there was any other filed rate of that road which could have been used.* So the Government, in complaining of the Standard, because of the rates used by the Southern Railway, is, in effect, seeking to condemn the shipper because of the failure of the carrier to file its tariffs.

Officials of the Southern Railway sought to defend it for not filing its tariffs, by testifying in this case that they supposed that the proportion accruing to the roads north of Grand Junction of the through rate from Evansville was paid; and in order to maintain this contention, endeavored to establish that the papers showing the rates that were used and which were entitled, "Rate Sheets," were not *tariffs* but were merely *division sheets*, that is, documents showing the division accruing to each of the several railways involved, of the through rate, and also stated that they were ignorant of the

---

(*a*) Record, Vol. 20, p. 406–17.
(*b*) Record, Vol. 4, 1980.
(*c*) Record, Vol. 9, p. 1440.
(*d*) Petition, Vol. A, p. 63.

use, and did not know, of the 13c. rate to Grand Junction (*a*). That they did know of the 13c. rate is conclusively shown by the fact that the agent of the Southern Railway at Grand Junction was the joint agent of that road and of the Illinois Central, and for a long time worked under instructions showing the 13c. rate, and must have received shipments the billing of which showed the rate (*b*).

2. These documents were tariffs and not divisions sheets :—

(A) A note on the documents specifically authorized the agent *to use the rates there shown as the rates of that road* on oil reaching Grand Junction from north of Evansville (*c*).

(B) An examination of the "Rate Sheets" and the tariffs referred to shows that the rate sheets are in fact tariffs, *because they showed many rates applying not only from Evansville but also from Cincinnati for which there was no other tariff authority* (*d*).

(C) The exchange list noted at the foot of some of these tariffs, or rate sheets, shows that as many as 76 copies of a single issue were distributed to various officials, including the freight agents of the several divisions of the entire system of the Southern Railway, who ordinarily have nothing whatsoever to do with the divisions of through rates, but to whom the documents must have been sent *as tariffs* to advise them of the existing rates for the soliciting of business (*e*). It is inconceivable that the Southern Railway would have so distributed these documents had they been merely divisions sheets.

3. The contention of the Southern Railway regarding these rate sheets is not sustained. It issued tariffs and furnished copies to the shipper, but inasmuch as it was receiving what was substantially the equivalent of its share of rates that were in effect in filed tariffs, it followed the practice *then not uncommon among southern roads, according to the undisputed evidence in this case,* (*f*) *of using such division of through rates without considering whether the proportion of the other roads had been paid and without filing any tariff showing the actual division used.* The only connection of the Standard in this transaction is that it paid the rates which the railroad called upon it to

---

(*a*) Record, Vol. 4, p. 1986, 2006; Vol. 5, p. 2021.
(*b*) Record, Vol. 4, p. 2013; Vol. 14, p. 1775.
(*c*) Record, Vol. 9, p. 1421.
(*d*) Record, Vol. 17, p. 3667–72.
(*e*) Record, Vol 10, p. 1670. 1672.
(*f*) Record, Vol. 14, p. 2036.

pay, shown in the tariffs, copies of which it furnished the shipper.

4. Not only is the Standard shown to have done nothing wrong with regard to these transactions, but it appears that the rates that it did use were not essential to its business in this territory, for to all of the territory in question only 34½ per cent. of its shipments were made at such rates, and even to the restricted territory peculiarly available to the combination of rates used, it made only 60 per cent. of its shipments at such rates, (*a*) *that is, not only was there nothing wrong with the rates used, but the Standard's business in that territory was not dependent upon such rates, otherwise it could not have made from 40% to 65½% of its shipments at the rates prevailing from other refining points, and therefore, the amount of its business could not have been due to such rates.*

III. The 8½c. and 6c. Whiting-Evansville rates were lawfully used.

1. (A) As already stated, for a great many years, the railroads running southerly and easterly from Chicago had in effect an 11c. oil rate to the Ohio River Gateways, including Evansville, Ind. (*b*). This rate was made by an association of competing railroads and, under the decisions of this Court in the *Trans-Missouri Freight Association* (*c*) and the *Joint Traffic Association* (*d*) cases, was illegal. At least one of the roads, the Eastern Illinois, broke away from the association rate, took individual action and as early as January, 1892, issued a tariff naming a 9c. rate from Whiting to Evansville, which was regularly filed with the Interstate Commerce Commission (*e*). Now Whiting and Evansville are both in the State of Indiana. The Eastern Illinois railroad, however, runs for part of the distance between those two points, in the State of Illinois. In 1892 this Court held in the *Lehigh Valley Railroad* case (*f*), that the transportation of property from a point in one state, through a part of another state, and back into the state of its origin, was not interstate commerce. In line with that decision, *the counsel of the Eastern Illinois road advised its traffic officer that a tariff naming a rate from one point in Indiana to another point in Indiana, although the road ran*

(*a*) Record, Vol. 19, p. 521-8.
(*b*) *Supra*, p., Par. 2.
(*c*) 166 U. S., 290.
(*d*) 171 U. S., 505.
(*e*) Record, Vol. 10, p. 1877.
(*f*) 145 U. S., 192.

part of the distance in Illinois, was not interstate traffic and that the tariffs showing such rates were not required to be filed with the Interstate Commerce Commission (a).

(B) Some months after making the 9c. rate, a new tariff was issued naming a rate of 8¼c., which was practically the equivalent of the Eastern Illinois road's share of the through rates then in effect from Toledo to Evansville, and was made pursuant to the policy of that road to try to force traffic to points on its line from Chicago (*b*). Pursuant to the advice of its general counsel, this tariff was not filed with the Interstate Commerce Commission. It passed through various issues; and the last, dated in 1901, had gotten into use prior to the decision of 1902 in the *Kansas City Southern Railway* case (*c*) to the effect that traffic between points in the same state, but passing in part through another state, is interstate traffic, and, continued to be used until something occurred to bring it into question.

(C) The evidence in this case of a large number of the leading traffic men of the country is that, prior to the enactment of the Hepburn Law, *it was the universal custom of all railroads, with all shippers and on all kinds of freight, to give the shipper the benefit of the lowest combination of rates that could be made and that it was not the custom of the roads to file with the Interstate Commerce Commission tariffs that merely named rates between points in the same state, although they used such state tariffs, whenever available, to make the lowest combination. This testimony stands wholly uncontradicted* (*d*).

(D) The Government complains that the Standard used the 8¼c. rate on its shipments from Whiting to Evansville, in many cases destined to points in the South, and contends that the 11c. association rate should have been paid. (*e*) The use of the 8¼c. rate, however, was merely in accordance with the universal custom of railroads to give to the shipper the lowest combination that could be made, and pursuant to the advice of the general counsel of the Eastern Illinois that the tariff naming the 8¼c. rate was not required to be filed with the Commission.

(*a*) Record, Vol. 14, p. 1800.
(*b*) Record, Vol. 14, p. 1723–5.
(*c*) 187 U. S., 617.
(*d*) Record, Vol. 14, p. 2069, 2075; Vol. 15, p. 2134–7, 2160, 2333.
(*e*) Petition, Vol. A, p. 62.

2 (A) Counsel for the Government, however, urge that the record shows that it was the intention of the railroad to keep this 8½c. rate secret. It is a matter of common information and also appears from the testimony in this case that, when one of an Association of roads having agreed rates, departs from the agreed rate, the other roads undertake to discipline the refractory road and bring it again into line (*a*). It would be surprising, therefore, if, in so departing from the Association rate, the Eastern Illinois had not preferred to avoid the discipline that would result if the other roads learned of the reduced rate. It appears that it was the custom of the Secretary of the Association making the 11c. rate to receive copies of the billing of all shipments supposed to be made at agreed rates, in order to know that such rates were being maintained. For the purpose apparently of deceiving the Secretary of this illegal Association, the Eastern Illinois inserted the 11c. rate in its waybills of shipments of oil made by the Standard, and copies of such waybills were sent to the Secretary of the Association (*b*).

(B) The collections of the charges for this large volume of continuous traffic, instead of being made by the local agent at Dolton, where the traffic was received by the Eastern Illinois, were made semi-monthly through the general office of that railroad at Chicago and, as a matter of convenience in checking the bills, a statement of car numbers and weights was attached to the freight bill, which statement, following the usual custom of roads, showed the 11c rate that had been inserted in the waybill; and the freight bills with such statements attached, were sent to the Standard. From this the Government urges that the Standard must have known that there was an 11c rate. While the 8½c rate had been in use since 1892, the Government admits that the 11c rate, over the route used, was not by its terms, originally applicable to Whiting and did not even technically become so, until the issuance of the Eastern Illinois application sheet in July 1903. If it be true that the showing of this rate on the statements attached to the bill, *which bill was always rendered at the rate actually paid*, (*c*) did apprise the Standard of the 11c rate and

(*a*) Record, Vol. 4, p. 1744.
(*b*) Record, Vol. 20, p. 363–4.
(*c*) Record, Vol. 4, p. 1546.

of the fact that the shipments were being so waybilled, even then this would merely give knowledge that the railroad was trying to conceal from the other law breaking roads, with which it had entered into an illegal agreement, the fact that it was not violating the law by using that rate but instead was engaging in the competition which the Sherman Anti-Trust law, as construed in the *Trans-Missouri Freight Association* and *Joint Traffic Association cases*, (*a*) was enacted to preserve.

3. Counsel for the Government, however, urge that certain memoranda, found in the traffic department of the Eastern Illinois road, indicate that the traffic officials of the Standard were in league with the railroad in trying to keep the 8½c. rate secret and should be condemned therefor; they rely principally upon an alleged memorandum communication from some clerk in the traffic department of this road to the Assistant General Freight Agent, containing a supposed humorous spelling of the word situation, as "sittiwashun" (*b*). The persons who, it is claimed, were concerned in the making of this memorandum were not called by the defense to explain it for the reason that when a copy alleged to have been made by Mr. Durand was offered in evidence without any proof of the signature of the man whose initials are supposed to be signed to it, it was objected to as not being the best evidence. Counsel for the Government then said:—

> "I will send for the original. * * * If I don't connect it up, I suppose it won't be in evidence" (*c*).

No further testimony was ever offered regarding it; therefore it is not in evidence in this case, and all conclusions based upon it should be disregarded.

4. For a time, some shipments were made from Whiting into the South at the rate of 6c. to Evansville. The Government condemns this because some time after this rate had ceased to be used, a Government investigator failed to find any tariff showing the rate. The defendants, however, produced three letters from the highest freight traffic official of the railroad, the first *quoting* the rate in *writing* and the next

---

(*a*) *Supra*, p. 215. (*b*) Record, Vol. 4, p. 1541.
(*c*) Record, Vol. 4, p. 1541-2.

stating that *the tariff naming the rate was still in effect* (*a*). Surely the shipper who takes the precaution to get *such written quotation* of rates is required to do no more before he can safely put his property into commerce.

5. The Government also complains that the rates from Whiting or Chicago into the South, which were rates established by *competing* railroads and which the Standard used on its shipments from Whiting to Southern destinations, were less per ton per mile than the rates from Ohio and Pennsylvania refining points to the same destinations, which latter rates were made by *entirely different carriers* than those extending from Chicago into the South (*b*). A mere statement of this proposition seems to furnish its own answer. A shipper at Chicago, before using the rates which competing railroads have seen fit to establish from that point into the South, cannot be required to see to it that different carriers, leading from other shipping points, in different freight rate making territory, where competitors are located, have made rates that are equal per ton per mile to those in effect from Chicago. *It is not contended that the proof shows that the Standard had anything to do with establishing the rates from Ohio and Pennsylvania south.*

FOURTH: THE OLEAN-VERMONT RATE SITUATION.

1. The Government also complains of the rates which the Standard used on shipments from its refinery at Olean, in the southwestern part of New York, to Vermont points, and contends that the rates used were illegal, secret and preferential as compared with the rates from Pennsylvania refining points, and also seeks to condemn the rates used on shipments wholly within the State of Vermont (*c*).

The rate from Olean to Rochester of which the Government complains has been in effect since the early eighties and is still in force. It was originally issued in competition with pipe lines and was for a long time used largely upon shipments of crude oil (*d*). In later years it has been used most largely upon partly finished products between the different refineries, to a much less extent on purely state shipments

---

(*a*) Deft. Ex. 224–6, Vol. 19, p. 611–3. (*b*) Petition, Vol. A, p. 64.
(*c*) Petition, Vol. A, p. 77. (*d*) Record, Vol. 15, p. 2224.

from Olean to other points in the State of New York, and upon *6% only of the shipments made under it to points in Vermont* (*a*). The shipments to Vermont were made by way of Rochester, Syracuse and Norwood, N. Y., to Burlington, or other Vermont points, and were made on the sum of the local state rates from Olean to Rochester, and from Rochester to Norwood, and on the interstate rate from Norwood to Vermont.

As already stated (*b*), prior to the enactment of the Hepburn Law, it was the universal custom of all railroads to give to shippers the benefit of the lowest combination of rates that could be made; it was not the custom of any railroad at that time to file with the Interstate Commerce Commission tariffs which merely named rates between points in the same state, and the Interstate Commerce Commission *did not require* such rates to be filed (*c*). It was likewise the universal custom of railroads, in giving the shipper the lowest combination of rates, to use such state rates whenever available to produce that result. *The use, therefore, by the Standard, on these shipments from Oleon, N. Y., to Norwood, N. Y., of the lowest combination of rates, was merely in accordance with the common practice of all railroads upon all kinds of freight and with all shippers, such practice being regarded as legal by railroads and shippers alike.*

2. The Government, however, contends that the Standard should have paid the rate of 26½c. from Olean to Norwood shown in a joint tariff of the Pennsylvania and New York Central railroads. This rate was originally put in by different railroad corporations, then separately operated, but now parts of the Pennsylvania and New York Central systems. It applied over the line of such other railroads, which had rails from Olean to Norwood *by way of Buffalo only and did not have any line through Rochester.* It was not filed with the Interstate Commerce Commission until, upon a reissue of tariffs, as a matter of office routine, by the railroads that had succeeded to the management of these former railroads, it was consolidated with other tariffs, showing interstate rates and so

---

(*a*) Def. Ex. 117, Vol. 18, p. 311.
(*b*) *Supra*, p. 216, Par. C.
(*c*) Record, Vol. 14, p. 2004, 2069, 2075; Vol. 15, p. 2134–7, 2160, 2333.

filed with the Commission on April 10th, 1904 (*a*). *Prior to this date, therefore, there could have been nothing wrong in the rates used.*

As so reissued and filed, the tariff makes a rate from Olean, to various places in Northern New York, including Norwood, as well as from Olean to several places in Massachusetts, but does not specify that the rate to Norwood applies by way of Rochester. It states that the route is in accordance with agreed percentages, that is the percentages agreed upon by the railroads for the division of the through rate (*b*). *There were no percentages or agreed divisions of the rate applying by way of Rochester.* There were such percentages by way of Buffalo (*c*). The only wrong doing contended for by the Government in connection with this whole Olean situation is that the Standard did not pay this rate of 26½c. per cwt. on its shipments from Olean to Norwood, which rate, by the terms of the tariff, did not apply over the route by which the shipments were made and which rate upon an examination of the percentage sheets, is found to apply only by way of Buffalo, but that instead the Standard *permitted the railroads, pursuant to the universal practice in such cases, to apply their local state rates, which were the only rates in effect over the route used.* Mr. Schindler, whom the Government puts forward as its freight tariff expert, testified that the tariff did not make a rate by way of Rochester (*c*); and eight witnesses, whom a Government witness admits are among the leading railroad freight traffic men of the country, called by the defense to construe the tariff, testified that they did not construe it as making a rate by way of Rochester (*d*). If their construction and that of the Government's witness, Mr. Schindler, is correct, then there was no wrong doing or violation of law in connection with the Olean situation.

Government counsel will urge, however, that the Standard has been convicted under the Elkins Act, for receiving a concession from this 26½c. rate on the particular shipments here in question, and, therefore, that this rate must have been held to be the legal rate. No record of such a conviction is in evi-

---

(*a*) Record, Vol. 15, p. 2252, 2263. (*b*) Record, Vol. 10, p. 1612–6.
(*c*) Record, Vol. 4, p. 1781–2.
(*d*) Record, Vol. 14, p. 1615, 2000, 2046; Vol. 15, p. 2094, 2151, 2185, 2227, 2282.

dence in this case. If it is to be considered, however, then we say:

The New York Central road, the carrier, was convicted (*a*) (judgment since reversed for want of jurisdiction in the trial court) (*b*) because it had not lawfully established a tariff rate when these same shipments were made. The shipper was next convicted, in the same court, (judgment now under review in the Court of Appeals) for having obtained a concession in shipping at less than the *lawfully established rate* of 26½c., which the prior conviction of the carrier had determined was *not* lawfully established. Such a conviction of the shipper seems certain to be reversed, although no question of jurisdiction is involved.

3. *The Norwood-Burlington Rate:*

Complaint is also made of the rates from Norwood to Burlington and other Vermont points as being low and secret. *The rates, however, were shown in tariffs that had been for many years regularly on file with the Interstate Commerce Commission* (*c*); and the testimony shows that, prior to the time when the Standard operated in that section of the country, a still lower rate had been used by an independent oil shipper who had no connection with the Standard. (*d*).

4. *Vermont State Rates out of Burlington.*

The Government also criticises the rates which the Standard used on its less than carload shipments of oil out of Burlington. The answer to this is, first, that the rates were state rates which the Standard could lawfully use, and also that it was the practice of the Central Vermont Railroad to make rates, less than the regular class rates, for the benefit of jobbers, or wholesalers, on shipments of all kinds that came over its line, to distributing points in Vermont, the railroad thus securing a double haul (*e*). Such rates were issued and used by many other shippers; and it is the uncontradicted testimony of a tariff clerk of this road that the rates of which the Government complains were in no way secret and would have been quoted upon inquiry to any shipper (*f*).

(*a*) U. S. v. N. Y. C. & H. R. R. Co., 153 Fed., 630.
(*b*) N. Y. C. & H. R. R. Co. v. U. S., 166 Fed., 267.
(*c*) Record, Vol. 10, p. 1608, 1609-10.
(*d*) Record, Vol. 16, p. 2625.
(*e*) Record, Vol. 15, p. 2364-6; and Def. Exs. 202-5, Vol. 19, p. 583-4.
(*f*) Record, Vol. 15, 2366, 2378.

5. *Comparison of Olean-Vermont rates with those from independent refining points.*

The Government also contends that the rates above referred to and used by the Standard in transporting oil from Olean to Burlington and thence distributed out of Burlington to points in Vermont, were discriminatory as against the independent refiners in Pennsylvania (*a*). The reply to this is:

(A) The total cost to the Standard, from Olean to such points of distribution, by the use of the rates of which the Government complains, and by means of which the Government contends the Standard delivered oil in less than carload lots in Vermont and thereby monopolized the oil trade in that territory, was in fact *not generally less and in many instances more than that at which some independent Pennsylvania refiner could have delivered oil at such points and considerably less than that at which the independents at New York Harbor could have reached such points, by water carriers to Burlington, Vermont* (*b*).

(B) The sum of the locals that the Standard used on its carload shipments from Olean to Vermont amounted to from 16c. to 17c. per cwt. (*c*). This was not out of line with the 19c. rate, which as the unquestioned legal rate prevailed over another route, that might have been used (*d*), and was surely reasonable as compared with the competitive rates to Burlington from other shipping points, *i. e.*, 6¼c. from New York Harbor via Hudson river, canal, and Lake Champlain (*e*), and 12c. from New London, Conn. (*f*).

6. *Significance on tariffs of words, "Not To Be Posted."*

Counsel have repeatedly urged that the words "Not To Be Posted" printed on the top of the tariffs that named the state rate from Olean to Rochester, and also those that named the rate from Rochester to Norwood, are conclusive evidence that the rates were intended to be secret. The reply to this is, first, that, if the rates were intended to be secret, the railroad would not be likely *so to advertise the fact* by the use of such words. In the next place, this contention of the Government is surprising in view of the explanation which is to be found in the

---

(*a*) Petition, Vol. A, p. 77.
(*b*) Record, Vol. 18, p. 348-9.
(*c*) Record, Vol. 18, p. 340.
(*d*) Record, Vol. 17, p. 3584.
(*e*) Record, Vol. 15, p. 2361; Vol. 16, p. 3021-4; Map, Def. Ex. 122A, Vol. 18, p. 350.
(*f*) Record, Vol. 10, p. 1695.

record. The uncontradicted testimony is that it was the universal practice of the Pennsylvania Railroad, the New York Central Railroad, and many other large railroad systems, to print these words at the top of all state tariffs, which tariffs it was not their custom to file with the Interstate Commerce Commission, and which they were not required by law to post in two public and conspicuous places in each station, as interstate tariffs were by the law required to be posted. These words were put on the state tariffs merely to indicate to the agents that they were not required so to post them and were printed on all state tariffs, no matter how large, generally used, or widely distributed (*a*). The particular tariffs in question were kept *in the same files at the railroad stations of each of these railroads, as all other tariffs, state and interstate, and were in the ordinary course of business, accessible to several hundred railroad employees* (*b*). The persistent contention of Counsel, in spite of this uncontradicted testimony, that these words denote something secret, is quite unwarranted and altogether misleading.

7. *Blind-Billing.*

The Government contends that it must have been intended to keep the rate from Olean to Rochester secret because the freight charges were collected through the general office, and because of the fact that the shipping orders were stamped with two rubber stamps, making large letters in purple ink, one directing the Pennsylvania Road to "blind-bill" the shipment and collect the charges from the shipper's general office, and another directing the New York Central to forward the shipment prepaid to Norwood and charge to the Standard Oil Company of New York (*c*).

The weight of freight and the rate are ordinarily shown on way-bills in order that the delivering agent may collect the freight charges. When they are not so shown, it signifies that the rate is otherwise collected. *The term "blind-bill" is a technical railroad term indicating that the rate and weight need not be shown, as the collection is not to be made by the delivering agent* (*d*). The technical phase "blind-bill", so used in one

---

(*a*) Record, Vol. 14, p. 1628-32; Vol. 15, p. 2296, 2332; Vol. 18, p. 312-38.
(*b*) Record, Vol. 15, p. 2230, 2297. (*c*) Record, Vol. 10, p. 1595.
(*d*) Record, Vol. 14, p. 1874; Vol. 15, p. 2230, 2240.

purple ink rubber stamp on these shipping orders had no more significance than did the other stamp which translated the phrase and directed the shipment to be made as a prepaid one and charged to the Standard Oil Co. of New York. The practice of making collections of freight charges through the office of the auditor of the railway, instead of through the local agent, commonly known as "general office settlement," was very common with the New York Central, where it was the custom so to collect upon request of any shipper worthy of credit (*a*). The same practice was not infrequent with the Pennsylvania, and has since received the approval of the statistician of the Interstate Commerce Commission (*b*).

8. *Tariffs issued for account of a particular shipper.*

It is also contended that the tariffs of the Central Vermont Railroad, which the Standard used in its shipments out of Burlington, were secret tariffs because they have on their face the words: "Account of Standard Oil Company." The evidence is that it was a common practice for railroads to put on their state commodity tariffs, which ordinarily expired by their terms at the end of the year, the name of the shipper or shippers at whose instance the rate was issued. This was done as a matter of convenience to the roads in keeping track of such tariffs, in order to know whether they were being used and required to be reissued as they expired; and the evidence is that these words did not denote secrecy, the tariffs were not concealed, but kept in the same files as other tariffs, and the rates would have been quoted to any shipper (*c*).

Other tariffs in evidence issued upon the application of independent oil dealers and others were made in the same way (*d*).

9. *Vermont state rates used in combination with through rates to Burlington.*

From time to time the Standard had occasion to make carload shipments both from its refinery at Olean and from its seaboard tank station at New London, Conn., to other towns in Vermont than the distributing station at Burlington. The lowest rate applicable to such shipments was the combina-

---

(*a*) Record, Vol. 15, p. 2343; vol. 19, p. 582.
(*b*) Record, Vol. 15, p. 2340, 2349. (*c*) Record, Vol. 15, p. 2193, 2366.
(*d*) Record, Vol. 18, p. 278–80; Vol. 19, p. 583–4.

tion of rates on Burlington, that is, the sum of the through rate to Burlington plus the local rate from Burlington to destination. There were, however, through class rates in effect but so high that they were manifestly not designed for handling such shipments and were actually prohibitive. On shipments to intermediate stations, instead of hauling the car through from Olean, or New London, to Burlington and hauling it back again over the same rails, the railroad stopped off the car at the intermediate destination. The shipper, however, paid the full rate into Burlington and back again (*a*). Counsel condemn this and contend that the prohibitive rate over the direct route from shipping point to destination should have been paid.

The uncontradicted testimony is that the use of the sum of the locals was considered legal by the railroad officials and the practice of so stopping off the cars at the intermediate destination was inaugurated by the railroad for its own convenience, resulted in no saving for the Standard whatever in cost of freight, and was of no value to it, except possibly a small saving in time (*b*). The various railroad officials above referred to, who were called by the defense to interpret tariffs, all testified that, at the time in question, they would have quoted and used the rates that the Standard paid, believing them to be lawful, except that the shipper was perhaps entitled to an application of the long and short haul clause and may, therefore, have paid more than the lawful rate to the extent of the local rate out of Burlington to destination (*c*).

FIFTH. THE SUPPOSED NEW ENGLAND NON-PRORATE.

1. The railroads leading from the Ohio and Pennsylvania refining points to New England, have for many years made through rates to Boston on petroleum oil as well as on other commodities. The Government contends, however, that while it was the policy of the railroads to apply the Boston rate to New England points genenally upon commodities other than oil, they did not make such through rates on oil but instead exacted their full locals, which were considerably higher than through rates, made on the usual basis, would have been; that the Standard supplied the oil trade in this territory from

---

(*a*) Record, Vol. 5, p. 2068. (*b*) Record, Vol. 15, p. 2369.
(*c*) Record, Vol. 14, p. 2002; Vol. 15, p. 2187.

its seaboard tank stations and thereby secured an advantage over the Ohio and Pennsylvania refiners, and that the failure of the railroads to make such through oil rates was at the instance of the Standard, which benefited therefrom and was thereby enabled to and did monopolize the oil trade in that territory (*a*). *It is not shown that the Standard had anything to do with the failure of the roads to make such through rates; and the Government's conclusion that the Standard was responsible for such failure arises solely from the fact that counsel conceives that the Standard profited from it.* At least two independents, one at Somerville, near Boston, Mass (*b*), and another, at Beverly, Mass. (*c*), also had seaboard shipping stations; and if there was any advantage, any shipper with sufficient foresight likewise to equip itself, might have enjoyed it.

2. The Government, however, is greviously mistaken in its contention that there were through rates to all this territory on all commodities except oil. To a very large number of points in Vermont, New Hampshire, and Maine, *the through Boston rate did not apply on any commodities*, but the railroads exacted either their locals or high arbitraries (*d*); Mr. Schindler who has not only assisted Government counsel in this case but has actively assisted in the prosecution of each of the criminal suits against the Standard for supposed violations of the Elkins law, *was also very much in error as to the actual oil rates to the various New England points, which were selected to illustrate such supposed want of through rates, for in attempting to quote 267 rates, he was wrong as to 212 of them* (*e*). Counsel for the Government question the construction of two of the tariffs that the defendants rely upon as showing the actual rates. A large number of witnesses, all high traffic officials and admitted by a Government expert witness to be among the leading freight tariff experts of the country, who were called by the defendants to construe the tariffs, construed them as making the rates for which we contend (*f*). While the Government called some witnesses who gave a contrary construction, they were, with a single exception all clerks, not having final responsibility in rate matters, and none of them

---

(*a*) Petition, Vol. A, p. 83.
(*b*) Record, Vol. 15, p. 2329.
(*c*) Record, 18, p. 278.
(*d*) Record, 18, p. 341–7.
(*e*) Record, 18, p. 363–9; map, Def. Ex. 186, Vol. 19, p. 550.
(*f*) Record, 14, p. 1679, 2051, Vol. 15, p. 2098, 2154, 2170, 2231, 2295.

men who have the standing, influence or importance in the railroad world, possessed by the witnesses for the defense (*a*).

3. It is admitted that the Boston oil rate did apply to all points on the Boston & Albany and the Fitchburg Division of the Boston & Maine railroads, thus giving the Boston rate to a large number of points in Massachusetts, Southern Vermont and New Hampshire (*b*). The roads, however, that serve the sparsely settled districts of Maine and northern Vermont and New Hampshire did not in some instances apply the Boston rate to that territory, but exacted their locals or arbitraries upon oil as upon many other commodities, thus securing a considerably larger revenue.

The New Haven road, reaching some Massachusetts and many Connecticut and Rhode Island points, did not make through rates. *The explanation of an official of that road* is that it refused to handle oil shipments with its New York connections, *because of the danger of fire that might result from handling oil on the wooden floats* by which the freight would have been required to be transported across New York Harbor, and that it refused to make through rates with its more northern connections, where such danger of fire did not exist, for the reason that so long as it refused to make through rates with its connections at New York it could not, as a matter of railroad policy, make through rates with its other connections (*c*). Although since 1906 the New Haven Road has joined in making such through rates, this is without significance except as indicating that the modern use of *steel* floats has probably done away with the danger from fire.

4. The reply to the Government's contention in this regard, is, therefore: First, the Government is in large part mistaken as to the actually existing rates, and, next, in so far as there were no through rates on oil to the territory served by roads other than the New Haven, the reason is merely that the roads had not then agreed upon through rates, as they have not even yet agreed upon through rates to all of this territory (*d*). The traffic in question into this sparsely settled territory was small and in any event of little consequence (*e*); *and there is no reason*

(*a*) Record, Vol. 20, p. 384, 398, 362, 277.
(*b*) Map, Record, Vol. 10, p. 1742.
(*c*) Record, Vol. 4, p. 1748.
(*d*) Record, Vol. 15, p. 2261.
(*e*) Record, Vol. 15, p. 2290.

whatsoever to suppose and no evidence to show that the Standard was in any way responsible for the want of through rates.

5. We do not consider the question of the rates complained of from Olean to other points in New York, as these were purely state rates, not then required to be filed with any state commission, or the Interstate Commerce Commission, and the only rates in effect that could have been used.

6. *The Westgate complaint.*

One Westgate, who has a refinery at Titusville, Pa., was called as a witness for the Government, and complained of the rates into this territory and produced freight bills showing the rates actually paid and about which he complained. An analysis of these freight bills reveals that he was sadly ignorant of the actual rates, and that he paid in many instances more than the rates actually in effect, in other instances he paid much more than lawful rates available over other routes, and in still other instances he paid less on interstate shipments than the lawful rates (*a*). Moreover the rates that he paid did not in general differ greatly from the cost to the Standard to reach the same points and were on some shipments less (*b*). A traffic manager of the New York Central, as a witness in this case, took upon himself and upon his road the responsibility for the delay that Mr. Westgate experienced in getting satisfactory and consistent rates, and exonerated the Standard from having had anything whatsoever to do with the rates complained of (*c*).

SIXTH: OIL RATES IN CENTRAL STATES.

1. *The Government contends*, that the oil rates from Chicago, or Whiting, to points in Ohio, Michigan, Indiana and Illinois, were less per ton per mile than the rates to the same points from the refineries at Toledo and Cleveland, Ohio, and in Pennsylvania, that this was to the advantage of the Standard, which shipped largely from its refinery at Whiting to these States, and, that therefore, this condition had been brought about by the Standard, which had monopolized the oil trade in this territory by this means (*d*).

(*a*) Def. Ex. 178, Vol. 19, p. 540–5.
(*b*) Def. Ex. 177, Vol. 19, p. 537.
(*c*) Record, Vol. 15, p. 2287, 2313.
(*d*) Petition, Vol. A, p. 88–96.

The answer to this contention is :—

(A) Chicago is so situated with reference to water and railroad competition in freight rates, that a lower basis of rates has long prevailed from Chicago and surrounding territory than in other parts of these central States, commonly known as Central Freight Association territory (*a*).

(B) While this, and the other reasons next hereinafter pointed out, resulted in the rates per ton per mile from Chicago to many places in this territory being less than those from Ohio and Pennsylvania refining points, counsel are mistaken in supposing that they were universally so, for there were many places in this territory to which the rates from Whiting and from the Standard's refinery at Lima, Ohio, from which it shipped more largely into much of this territory than from Whiting were greater per ton per mile than those from Toledo (*b*), an important, independent refining point.

(C) A further explanation of the inequality of rates so complained of, in so far as there was such inequality, is found in the fact that the Ohio River runs in a southwesterly direction, so that Chicago is about equidistant from the three principal Ohio River gateways, Evansville, Louisville and Cincinnati, while the distance from Toledo to these same gateways varies as much as 175 miles, Evansville being that much further away from Toledo than Cincinnati. The differences in distances from Cleveland and Pittsburg to the three gateways are necessarily still greater. Because these gateways are equally distant from Chicago, the rates to each gateway were the same, not only on oil, but upon other commodities and with regard to class rates as well ; while the rates from Toledo, Cleveland and Pittsburg, because of the difference in distance, varied proportionately, not only on oil, but also on all other kinds of freight (*c*).

Of course, it is not only the direct lines between the great commercial centers that seek to get traffic passing from one to the other ; but railroads having round-about routes make as low rates and seek to secure a share of the traffic. So not only did the Pan Handle and the Big Four roads, leading directly from Chicago to Cincinnati, seek to secure the oil trade at the

---

(*a*) Record, Vol. 14, p. 1757, 1767 ; Vol. 18, p. 506 ; Vol. 19, p. 509-10.
(*b*) Record, Vol. 18, p. 378. (*c*) Record, Vol. 18, p. 370-3.

prevailing rate of 11c. per cwt., but the Lake Shore and Michigan Central roads, in connection with the Cincinnati, Hamilton & Dayton road, with which they connected, made and published the same 11c. rate via Toledo and Detroit as prevailed over the lines running direct to Cincinnati. There were likewise in this territory numerous other north and south roads, which in the same way connected with various east and west roads, so that, by an application of the fundamental principles of rate making, the rates from Chicago to all of the territory in question by all routes were determined upon the basis of the direct Chicago-Ohio River rate (*a*).

2. *Rates between Whiting and Toledo.*

The Government complains most strenuously, however, that, for a considerable period of time, the oil rate from Chicago to Toledo was 10c. per cwt., while the rate from Toledo to Chicago was 12c. per cwt. (*b*). The explanation is this: The rate from Chicago to Cincinnati was 11c.; and as this rate applied also by way of Toledo and Detroit, the rate from Chicago to those points could not exceed 11c.; and inasmuch as the distance was only about half that to Cincinnati, it was in fact 10c. No such element of freight rate making entered into the rate from Toledo to Chicago. The oil rate from Toledo to Evansville, over the direct route, was 15c., so that if the roads leading from Toledo *by way of Chicago* to Evansville made the same rate to Evansville, it might have been not to exceed 15c. and was in fact 12c. The rates, therefore, between Chicago and Toledo, which at first blush might seem discriminatory as against the Toledo refiner, find easy solution in an application of this fundamental principle of freight rate making which causes it to appear that any other adjustment of rates would have been an unnatural one. A chart and tables demonstrating the above theory of freight rate making in this territory are to be found in the record (*c*).

3. Not only, therefore, is there no reason to believe that the Standard was in any way responsible for the conditions in rates that prevailed from Chicago and from Toledo to the territory in question, but conditions of trade were such that *only about 30 per cent. of the oil business of the Standard in the ter-*

(*a*) Record, Vol. 18, p. 373–4.
(*b*) Petition, Vol. A, p. 89.
(*c*) Def. Exs. 132–5, Vol. 18, p. 370–3.

ritory in question was supplied from Whiting, while the remaining 70 per cent. was supplied from the Standard's Eastern refineries and paid the same rates as the independent refiners and about which the Government complains (*a*).

4. *Comparison of Oil and 6th class rates in C. F. A. Territory.*

The Government sought to sustain its contention in this regard by showing that the average oil rates from Whiting to one hundred selected towns in this territory, were less than the average of the sixth class rates to the same places (*b*). That this was wholly meaningless, however, is shown from the fact that a like comparison of the oil rates from Toledo, an important independent refining point, to a still larger number of towns in the same territory, shows that the average of such oil rates from this independent refining point are practically as much less than the sixth class rates as were the oil rates from Whiting to the one hundred points which the Government selected (*c*).

SEVENTH. MISCELLANEOUS SUPPOSED DISCRIMINATIONS.

The Government also contends that various other rates used by the Standard were illegal or discriminatory, though none of these are of any particular importance. The error of the contention with respect to each is fully explained in the record. Without reciting the details in connection with all of them, two instances will be more particularly referred to as illustrative of the defense that is interposed as to all.

1. (A) *In regard to rates to the Upper Mississippi Crossings* such as Keokuk and Davenport, Iowa, from the refining points in the Central States, the Government contends that although the railroads made through rates quite generally on other commodities between these points, they did not make through rates on oil, but charged their local rates to and from Chicago, the sum of which amounted to considerably more than through rates would have been; that the through rates were taken out in 1889, more than a year before the Standard's refinery at Whiting was completed; and that this was at the instance of the Standard, which profited thereby and should be condemned therefor (*d*).

(*a*) Record, Vol. 18, p. 380-1.
(*b*) Record, Vol. 10, p. 1702.
(*c*) Record, Vol. p. 18, 398.
(*d*) Petition, Vol. A. p. 76.

(B) Counsel leave it to be presumed that, prior to 1889, the railroads had always made such through rates. The fact, however, is: until the railroads got together, following the adoption of the Interstate Commerce law in 1887, in an endeavor to get a consistent working basis of rates in line with the requirements of that law, there never had been any such through rates on any commodity; so that, when taken out in 1889, such through rates had been in effect but a short time (*a*).

(C) The explanation of one of the traffic officials, who had to do with this transaction, is that when the through rates were put in, they were put in on all commodities, but that, as this resulted in the railroads getting less revenue than they had previously received, such through rates were taken out as soon as it was found that there was no particular demand for them (*b*). Now there were no wholesale oil dealers or jobbers, at these Mississippi River crossings, asking for such through rates and the oil rates were accordingly taken out. There were other commodities, *e. g.*, salt and coal, shipped in very large quantities, on which the through rates were also taken out (*c*). The change in rates complained of took place more than a year prior to the completion of the Whiting refinery and the undisputed evidence of this railroad official is that the construction of the Whiting refinery had nothing whatever to do with these rates, which were determined by the railroads from matters of rail road policy alone (*d*).

2. *The rates from Parkersburg and Marietta* into the south are another instance of supposed discriminations. There is an independent refinery at Marietta, Ohio. Twelve miles away, on the other side of the Ohio River at Parkersburg, W. Va., is a refinery of the Standard. Generally speaking these points take the same rates. The Government contends, however, that there are a considerable number of points in the South, such as Memphis, Tenn., Charlestown, S. C.; Savannah, Ga., and Vicksburg, Miss., to which the rates from Parkersburg were less than they were from Marietta, although it is conceded that *they were expressed in regularly published and filed tariffs.* The Government considers this a discrimination

---

(*a*) Record, Vol. 15, p. 2206.
(*b*) Record, Vol. 15, pp. 2205-9.
(*c*) Record, Vol. 4, p. 1762; Vol. 15, p. 2210.
(*d*) Record, Vol. 15, p. 2209.

against the Marietta refiner, for which the Standard should be condemned (*a*). The reply is :

(A) The Government was mistaken as to the actual existing rates to some of these points, there being other and different rates from Marietta, expressed in regularly published tariffs, that were less than the Government supposed (*b*).

(B) Most of the points as to which there was any difference in rate, are so far away that, in the ordinary course of things, these refiners made no attempt to reach them. It is also shown that, while the rates from these two refineries to points in the north were quite generally the same, there were some points, for example, Boston, Mass., to which the rate from Marietta was 5c per cwt., less than from Parkersburg, W.Va. (*c*), although, of course, no one made any shipments from either of these points to Boston any more than they did to Savannah or Charleston. Questions with regard to such rates are purely academic, as a consideration of the amount of shipments which the Standard made from thirteen different refineries or shipping points, from which it made shipments into the south conclusively shows. From this it appears *that only two-thirds of one per cent of such shipments were made from Parkersburg* (*d*).

3. *Kansas Rates :* Without explaining in detail the questions raised with regard to freight rates in Kansas, for which counsel ask the court to condemn the Standard, because they conceive that it was responsible for the rates which the railroads adopted, we need say only, that the undisputed evidence of the railroad official who was largely responsible for such rates, is that the changes of which the Government complain were made *not at the request of the Standard, as counsel contends, but over its vigorous protest* (*e*).

4. *The questions as to shipments in California* pertain to state rates, which were admittedly legal rates, that the shipper might lawfully use, except as to two cars out of all the shipments the Standard has ever made in that part of the country, with respect to which the Government contends that the payment of an overcharge amounting in the aggregate to about

---

(*a*) Petition, Vol. A, p. 144.
(*b*) Record, Vol. 18, p. 396.
(*c*) Record, Vol. 18, 397.
(*d*) Record, Vol. 19, p. 521–8.
(*e*) Record, Vol. 15, p. 2212–14, Def. Ex. 196, Vol. 19, p. 572.

seven dollars and forty cents, was in effect, a rebate: This was on a total yearly business of about one million dollars. In 1904, the Standard was not doing more than 24 per cent. of the total oil business in California (*a*). It cannot be contended, therefore, that the $7.40, if it were a rebate, had had any tendency to effect a monopoly of the oil business.

5. *Pacific Coast Rates:* The Government also condemns the failure of the railroads to make through rates from the eastern refineries to the Pacific Coast, and takes credit for having brought about such through rates, by an increase in rate of 11½c. from all Chicago, Mississippi Valley, Mid-Continent and Texas rate making territories and oil producing points (*b*), although the traffic manager of an association of independent oil refiners also asks credit for the same change in rate (*c*). We need note only that there seems to be no occasion for controversy as to who shall have credit for this change in rates, *as its net result was merely to increase the cost of any oil shipment from the east to the Pacific Coast not less than 11½c. per cwt.*, and thereby to give to the Pacific Coast refiner a more complete control of that trade than he had previously enjoyed (*d*). The same condition of rates that prevailed as to petroleum oils existed as to nearly all other oils that are shipped in tank cars (*e*) and likewise as to a considerable number of other commodities (*f*). Moreover the Standard is shown to have shipped much more largely than anyone else at the rates complained of (*g*).

6. *The Rates from St. Louis to Louisiana points,* we do not consider as they were used exclusively by the Waters-Pierce Oil Company, whose traffic officials were entirely independent of the Standard (*h*), and that company prosecutes no appeal.

7. *Change in rates:*

The Bureau of Commerce and Labor takes great credit to itself for having investigated the question of petroleum freight rates, and brought about, as it assumes, within the period of about two years, thirteen different changes in petroleum rates, which it contends were all to the disadvantage of the Standard; and it is urged that such changes in rates are a con-

---

(*a*) Record, Vol. 19, p. 683.
(*b*) Record, Vol. 14, p. 1820.
(*c*) Record, Vol. 5, p. 2050.
(*d*) Record, Vol. 14, p. 1819.
(*e*) Record, Vol. 14, p. 1823.
(*f*) Record, Vol. 19, p. 549.
(*g*) Record, Vol. 19, p. 548.
(*h*) Record, Vol. 14, p. 1969.

fession of guilt on the part of the railroads for which the Standard should be condemned. The traffic manager of the National Petroleum Association asks credit for a considerable number of such changes, which seem to have followed naturally from an application on his part to a freight situation of the elementary principles of common sense (*a*). Assuming, however, that the Bureau is entitled to credit for some of the changes, it would be much to be regretted if an important department of the Government directing its energy for a long period of time at one particular object, could not have produced some result. This record clearly shows as, of course, everyone knows, that freight rates are constantly changing. *How many more changes than those that took place during the two-year period in question, might be found in any other equal period, if a like examination of rates were made, does not appear.*

8. *Standard officials as directors of railways :*

Counsel for the Government also contend that the Standard had been enabled to secure the aforementioned, alleged discriminatory rates, through the fact that the several individual defendants and those associated with them were directors in various railways (*b*). In answer :—

(A) The uncontradicted evidence is that the directors of the Standard Oil Company had nothing whatever to do with rates which were entirely under the control of its traffic officials (*c*).

(B) The supposed discriminations relate to roads, in most instances, with which no one connected with the Standard had anything to do. That is, none of the so-called Standard Oil men were directors of the Alton, Burlington, Eastern Illinois, Pennsylvania, Southern Ry., or Central Vermont Ry. On the other hand, most of the roads with which persons connected with the Standard, are shown to be directors, are not roads as to which the Government makes any specific complaint, *e. g.* the Wisconsin Central, St. Paul, Frisco, Kansas City Southern, Delaware, Lackawanna & Western, Central New England, Long Island, New York Ontario & Western, Nickel Plate, Pittsburg & Lake Erie, Florida and East Coast and Rutland railways. *The argument from the directorship in railroads makes most strongly against the Government's contention.*

(*a*) Record, Vol. 5, p. 2034, 2043, 2045.
(*b*) Petition, Vol. A, p. 98. (*c*) Record, Vol. 14, p. 1841.

CHAPTER XVIII.

ALLEGED MONOPOLIZING OF TRADE IN RAILROAD LUBRICATING OILS BY

GALENA SIGNAL OIL COMPANY.

FIRST: General Statement.

The Galena-Signal Oil Co., one of the defendants, is a corporation doing business at Franklin, Pennsylvania, and organized under the laws of that State. It is the successor of two earlier companies, one the Galena Oil Works, Limited, and the other the Signal Oil Works, both of which, and their successor, however, have been held substantially in common ownership for over thirty years. Seventy per cent. of the capital stock of the present company is owned by the Standard Oil Co. of New Jersey (*a*). The business of the present company and of its predecessors has always been confined to the manufacture and sale of lubricating and signal oils, chiefly for the use of steam and electric railroads, including street railroads. A very large percentage of the steam railroads of the United States and Canada; over seventy-five per cent. of the steam railroads of South America; and a substantial mileage of the steam railroads in France Italy, Denmark, Switzerland and other European countries, are now and have been for many years lubricated with the oils manufactured and sold by this Company (*b*). About twenty-nine per cent. of the street railway mileage of the United States are at the present time similarly lubricated (*c*). The street railway business of the company has been principally developed in the past seven years, which fact accounts for the smaller percentage of this branch of the business handled by the Galena Company (*d*). The total net sales of the Company in 1906, after deducting "excess cost of lubrication", was $8,909,686.68. The net profits of the Company for the same year amounted to $2,749,036.63, or about 31 per cent. of the amount of the total net sales.

(*a*) Record, Vol. 19, p. 680.
(*b*) Record, Vol. 11, p. 154–185.
(*c*) Record, Vol. 18, p. 158–160, 146-156.
(*d*) Record, Vol. 11, p. 389–390.

SECOND: The great success of the Galena oils and their almost universal adoption on the steam railroads of this country is due, first, to the superiority of the oils themselves, and, secondly, to the improved methods and expert supervision by the Company.

I. *The superiority of the Galena Oils.*

1. The lubricants of this Company are made by carefully guarded and *exclusive secret processes*, known only to a few individuals, by which processes oxide of lead is combined with other ingredients in perfect solution, with the result that the lubricants have a body or fluid consistency which preserves the necessary film of oil between the bearing surfaces for long periods and under the most trying conditions of climate, weather and speed (*a*).

2. The merits of these lubricants are unique and extraordinary. By the uncontradicted testimony of a great number of witnesses, it appears that their use has wrought a revolution in the whole subject of railway lubrication; has substantially done away with hot boxes and the many evils flowing from them; has greatly reduced the cost of lubrication; and that almost the entire steam railway service of the United States depends for its successful operation to-day upon the lubricants of the Galena-Signal Oil Company.

Prominent officers of various railroads were called by the Defendants, all of whose testimony, as well as that of the experts of the Galena Company itself, was unanimous upon the point of the excellence of these lubricants. These witnesses included Mr. McKenna, 2d Vice-President of the Chicago, Milwaukee and St. Paul Railroad; Mr. Fritch, Assistant to the President of the Illinois Central Railroad; Mr. J. F. Walsh, of the Chesapeake and Ohio Railway, and many others (*b*). The Government has not put forward a single witness nor offered a scrap of evidence which in any way

---

(*a*) Record, Vol. 11, p. 266, 447, 523; Vol. 18, p. 171.
(*b*) Record, Vol. 11, p. 30, 79, 80, 103; Vol. 18, p. 120, 125.

weakens the foregoing statements. *Substantially, it stands admitted in the case, that, in respect to their excellence, the products of this Company have, for upwards of thirty years, been without a rival.*

The United States Government has itself in the most formal manner repeatedly certified to the excellence of the Galena lubricants. Thus, for several years, the Galena Company furnished all the lubricants used by the Panama Railway and by the Isthmian Canal Commission, and certificates from military engineers in charge, under date of April, 1908, certify that the Galena oils are "*the only oils that will meet the requirements of the service and manufactured only by the Galena Signal Oil Company*" (*a*). Furthermore, the officials of each World's Fair, beginning with 1876, all of whom were acting under the authority of Acts of Congress and on behalf of the Government, conferred upon this Company or its predecessors medals for the excellence of the lubricants manufactured by them (*b*).

3. In addition to the technical legal rights of the Galena Company by virtue of being the sole manufacturer of lubricants produced by exclusive secret processes, it is indisputable that no railroad or other customer could have procured these desirable lubricants from any one except the Galena Company. It is idle, therefore, to base a charge of monopolizing upon the fact that the Galena Company has secured a very large percentage of the business of railroad lubrication. This business has come to it because the railroads had to have Galena oils (there being no others good enough) and because they could get these oils nowhere else.

II. *Improved Galena methods of lubrication.*

1. From the beginning of the business, in making an agreement to lubricate a railroad and *as part of the consideration for the same*, the Galena Company has undertaken to supervise such lubrication by its own experts without further charge, and the railroad companies on their part have reciprocally agreed to co-operate with the Oil Company in all matters tending to economy in the use of lubricants and to the adoption of the best methods. In the fulfillment of this pro-

---

(*a*) Record, Vol. 18, pp. 167, 176.
(*b*) Record, Vol. 18, p. 171; Vol. 11, pp. 440–444.

vision, the Oil Company has trained up a corps of experts in the matter of lubrication, who probably have no equals in the world. They have reorganized the system of lubrication upon railroad after railroad, doing away with wasteful practices; introducing the most economical and efficient methods; and wherever permitted, training railroad employees from high to low in the science of lubrication as the Galena Company has developed it. For the most part, the railroads have given a serious construction to their engagement to co-operate with the Oil Company, and have followed the suggestions of the Galena experts, and have clothed the latter with the authority necessary to compel compliance by the railroad employees with the instructions of the experts. Wherever such co-operation has been freely extended, the results have been uniform, on the one hand, in greatly reducing the amount of lubricants consumed, and, on the other hand, in securing the highest proficiency in lubrication (*a*).

2. In a few instances, railroads have failed to co-operate with the Oil Company and have refused the authority necessary to compel the railway employees to comply with the reasonable suggestions of the Galena experts. In such cases, the usual economy has not been brought about, and the amount of the various lubricants consumed to a unit of work has been greatly in excess of what is the case on the railroads where the co-operation has been most ample. The most conspicuous examples of lack of co-operation are the railroads comprising the Pennsylvania system, and the consequence has been that the consumption of lubricants on that system has been from two to three times as large as that upon the other railroads best managed in this respect.

III. *Great saving in cost of lubrication due to the use of Galena Oils.*

Although the invoice prices of Galena lubricants are somewhat higher than those of other lubricating oils, great saving in cost of lubrication has nevertheless resulted to almost all railroads from the use of Galena oils and methods. Obviously, the most perfect test of saving is the comparison of

---

(*a*) Record, Vol. 11, pp. 53, 70, 103, 124-6, 274, 289, 301.

the cost of oil in hauling a ton of freight a given distance. Measured by this standard, it appears that, with a few unimportant exceptions, every railroad using Galena oils for the ten years 1897–1906 effected a substantial saving in the cost of its lubrication, which saving in the case of over forty railroads ranged from 30 to 80 per cent. of the cost at the beginning of the period (*a*).

IV. *Other economies.*

Many collateral economies of great value have also resulted from the use of Galena oils and methods. Thus, reduced cost of waste (*b*); saving in coal (*c*); economies in other departments due to example and improved discipline (*d*).

THIRD: The Galena contract is one for the sale of lubrication, at a maximum cost per unit of service, and not for the sale of oil at a price per gallon.

I. This is the only fair construction to be placed on the contracts themselves.

Most of the railroad business of the Company is done through the medium of contracts between the Oil Company and the respective railroads, which contracts are and for many years have been substantially identical in their provisions (*e*). The chief feature of these contracts is a provision whereby the Oil Company agrees that its net charge for the lubrication of the railroad during the period of the contract shall not exceed a fixed sum per thousand miles run by the locomotive, passenger cars and freight cars, respectively, used by the railroad company. For convenience, a uniform initial gallon price for each different kind of lubricant is inserted in the contract, and the amounts of the various lubricants delivered to the railroad company are invoiced from month to month at these initial prices. The invoices are paid from month to month by the railroad companies, except that the contracts provide that

(*a*) Record, Vol. 18, p. 216.
(*b*) Record, Vol. 18, pp. 125, 230; Vol. 11, pp. 72, 124.
(*c*) Record, Vol. 11, pp. 282–3; Vol. 12, pp. 634–5.
(*d*) Record, Vol. 11, pp, 33, 71, 105, 127.
(*e*) Record, Vol. 1, p. 419.

any railroad may withhold payment of invoices in excess of the amount of the guaranteed cost up to the time of payment. At the end of the year or other accounting period, if the amount paid by the railroad on the monthly invoices exceeds the total maximum guaranteed cost based upon the mileage, the Oil Company refunds the excess to the railroad. On the other hand, should the total amount of the monthly invoices be less than the total maximum guaranteed cost, then the settlement is made simply on the invoice figures (*a*).

II. The testimony of the parties to, and their course of dealings under, these contracts prove conclusively that the construction of the contracts here contended for is the only admissible one. Thus, Mr. McKenna of the St. Paul, Mr. Fritch, of the Illinois Central, Mr. Hodges, of the Atchison, Topeka & Santa Fé, Mr. Fechtig of the Atlantic Coast Line and other railroad men, besides officers and employees of the Galena Co., all testified that the contract was regarded by them as a *contract for lubrication* and in no other light and that all settlements under it were had accordingly (*b*). No evidence of any kind was offered in contradiction of this testimony. We submit that the Government should not be permitted to impose upon the contract an entirely different meaning than that which the parties themselves have given to it and in accordance with which they have acted under it.

III. From the beginning, the practice of the Oil Company has been, whenever making a contract for the first time with a railroad, to agree to lubricate that railroad at a certain percentage of the previous cost theretofore sustained by the same railroad when its equipment was lubricated with other oils, the percentage usually being ninety per cent., but, in a few instances, either ninety-five or one hundred per cent. With very few exceptions, this has been the origin of the maximum guaranties on every railroad lubricated by the Galena Signal Oil Company (*c*). Starting with the initial maximum guaranties thus determined, the maximum guaranties in subsequent renewal contracts have been increased or decreased as the case may be, according to the conditions on the particular

---

(*a*) Record, Vol. 9, p. 1374.
(*b*) Record, Vol. 11, pp. 26, 96, 343, 358, 362; Vol. 1, p. 444.
(*c*) Record, Vol. 18, p. 184.

railroad and according to the results which experience under the original or successive contracts has worked out. Each railroad, therefore, has to be considered by itself as an independent proposition.

FOURTH: The maximum guaranteed cost per unit of service to the different railroads necessarily differs very widely.

I. Broadly speaking, the guaranteed costs to different railroads vary widely according to the mechanical and topographical conditions of the particular railroad and to the personal equation of its management and employees. Thus, Mr. Harrison of the New York Lubricating Oil Co., an independent Company, which has a similar form of contract, admitted charging the Louisville & Nashville Railroad $1.53 per 1,000 locomotive miles, while he charged the Central of Georgia only 85c. per 1,000 locomotive miles, on account of local differences (*a*). Mr. Steinbrenner, Auditor of the Galena Company, said (*b*):

> "There are no two roads, no two divisions, nor two engines will run at the same cost per thousand miles."

II. The guaranties on the same railroads have frequently been decreased or increased from time to time, according as the cost of lubrication to the Oil Company has diminished under the educative effect of Galena methods and expert supervision, or has increased on account of the increased weight of equipment (*c*). The average percentage of increase in the weight of locomotives on 24 of the largest railroads in the United States from 1897 to 1907 was 47 per cent. The cost of lubrication to the Oil Company increases substantially in the same proportion as the increase in the weight of equipment; so that great loss would result to the Oil Company unless it were permitted to increase its guaranties somewhat in proportion to the increase in weight (*d*).

(*a*) Record, Vol. 2, p. 566, 568.
(*b*) Record, Vol. 1, p. 439–40.
(*c*) Record, Vol. 18, p. 184; Vol. 19, p. 823–886.
(*d*) Record, Vol. 11, p. 51, 75–76, 130, 364.

III. Where differences in guaranties are not explained by the foregoing reasons, they are generally due to differences in the historical origin and in the development of the particular contracts, the guaranties on each railroad following the changes in the initial conditions of such railroad and without any reference to other railroads. Necessarily such a system must result in considerable difference in the guaranties on different railroads (*a*).

IV. Much has been made by the Government of the fact that certain railroads, especially those comprised in the Pennsylvania System, owing to their extravagant use of oil, and to their failure to co-operate with the Galena experts, have used an excessive quantity of oil, so that the total payments made by them, when reduced to the gallon basis, shows an apparently low price per gallon for the oil so used. This method of comparison is entirely unreasonable and unfair. These railroads are no exception to the ordinary rules concerning these contracts, except in so far as unprofitable contracts made between the Galena-Signal Oil Company and these railroads may have been continued. *Each of the contracts first entered into by such railroads was based upon a percentage of the previous cost, and each of the contracts was for the sale of lubrication and not for the sale of oil by the gallon* (*b*). Changes in the guaranties on the Pennsylvania System were made upon like considerations as those which operated in the cases of other railroads. If the maximum guaranteed costs, however, have continued to be relatively low in the case of the Pennsylvania System, so that the net result there has been a loss to the Oil Company, it is explained sufficiently by the advertising value at home and abroad to the Oil Company of lubricating so important a system as the Pennsylvania (*c*).

(*a*) Def. Ex. 62, Vol. 18, p. 182; Vol. 11, p. 350, 26–7, 397.
(*b*) Record, Vol. 9, p. 1326–1328, 1340–43, 1324; Vol. 7, p. 280.
(*c*) Record, Vol. 1, p. 441–2.

FIFTH: The Government's charges not maintained even upon its own interpretation of the Galena contract.

I. The Record contains statistics as to 94 steam railways, constituting about 70 railway systems in the United States, all of which were selected by Counsel for the States, and which constitute only a small portion numerically, though a large portion in respect to mileage, of the total number of steam railroads using Galena lubricants. The statistics as to these ninety-four railroads have been grouped by the Defendants into the said seventy systems, because the cost of operating the different railroads in a single system in the last analysis comes out of a common treasury, and it is immaterial for any purpose in this suit whether the rates charged for lubricating different branches of a single system are or are not uniform or consistent with other. Assuming the correctness of the arbitrary and unwarranted interpretation placed by Counsel for the Government upon these Galena contracts and of the quantitative results of their operation arrived at by such interpretation, it still appears that out of a total gross business of $6,039,741, done by the seventy railway systems in question, slightly over one-half of such business is done on a basis which results in the payment of ninety per cent. or over of the invoice prices of all lubricants sold; substantially twenty-five per cent. additional shows apparent prices ranging from eighty to ninety per cent. of the invoices; about nine per cent. ranges between seventy and eighty per cent., and only about sixteen per cent. of the total business of said seventy systems, including sales to the Pennsylvania system, show apparent prices of less than seventy per cent. of the invoices (*a*).

II. Contracts identical with those found in the Galena contracts, based upon a maximum guaranteed cost and with settlements under similar guaranties and not upon the invoiced prices, are used by theAmerican Brake Shoe and Foundry Co. and the New York Steam Heating Co. (*b*); commonly by water

(*a*) Record, Vol. 18, pp. 220-222.
(*b*) Record, Vol. 18, pp. 143, 236.

companies, and especially by the New York Lubricating Oil Co., the independent company, whose President, Mr. Harrison, is the only adverse witness called by the Government on this branch of the case (*a*).

SIXTH. No acts of monopolistic exclusion shown.

I. In no instance does it appear that the Galena Company has secured business by offering lower prices than its competitors. In the three instances in which contracts previously held by the New York Lubricating Oil Co. were awarded to the Galena Company, its guaranties were higher than those of the New York Company, while on the other hand the New York Company had previously taken two of the contracts away from the Galena Company by lower guaranties.

II. The loss of these contracts by the New York Company is abundantly accounted for by the inferiority of that company's oils, as evidenced by the fact that the use of the New York oils resulted in an immense increase in the number of hot boxes, coupled with great increase in the cost of waste, particularly on the Louisville & Nashville Railroad, but also on the Central of Georgia (*b*).

III. The charge made in the pleadings that railroads have been influenced to give business or to pay unreasonable prices to the Galena Company, either through freight inducements offered by other Standard Oil interests or by the influence of individuals actively connected with some of the defendant companies, who are at the same time directors in various railroads, is utterly unsupported by evidence and was practically abandoned by the Government.

(*a*) Record, Vol. 2, pp. 763–777.

(*b*) Record, Vol. 18, pp. 280–1; Vol. 12, pp. 560–65; Vol. 2, p. 517.

CONCLUSION.

The foregoing statement of facts, constituting Volume II. of Brief for Appellants, sets forth all the essential facts in the case. It is based on a careful examination of the entire record. We cannot forecast what the Appellee will include in his statement, but we believe that we have omitted no facts which have any material bearing on the issues.

JOHN G. JOHNSON,
JOHN G. MILBURN,
FRANK L. CRAWFORD,
Of Counsel.

M. F. ELLIOTT,
MARTIN CAREY,
Solicitors for Appellants,
26 Broadway,
Borough of Manhattan,
New York City.

APPENDIX I.

TABLE OF ACQUISITIONS.

REFINERIES.

Part I.

REFINERIES WHOLLY ACQUIRED.

Acquired with stock of Standard Oil Co. of Ohio.	Purchased for cash.	Authorities and Remarks.
Name and What acquired.	Name and What purchased.	
1871.		
Clarke, Payne & Co., Cleveland. (Refinery)		"We bought the properties." 16: 3066. 19: 619, 887-8, 893; 6: 2626.
1871-2.		
Hanna, Baslington & Co., Cleveland. (Refinery)		do
Joseph Stanley, Cleveland. Refinery).		do
Stewart & Arter, Cleveland. (Refinery)		do
Westlake, Hutchins & Co., Cleveland. (Refinery)		do
	1871-2. Henry C. Smith and 9 other small refineries at Cleveland.	"We bought the properties." 16: 3066. 16: 3159-60; 6: 2625-6.
1873.		
Long Island Oil Co. New York. (Stock)		"A seaboard refinery * * with water facilities. We purchased the refinery property and the dock property." 16: 3075. 16: 3172; 19: 619.

Acquired with stock of Standard Oil Co. of Ohio.	Purchased for cash.	Authorities and Remarks.
Name and What acquired.	Name and What purchased.	
	1873.	
	Chess, Carley & Co. Louisville. (Half interest in partnership)	Non-competing. Incorporated 1881. Half stock purchased then. Balance 1885–6. All for cash. 17: 3359, 6: 3240; 19: 677.
1874.		
Chas. Pratt & Co. Brooklyn. (Stock)		19:887–8; 16: 3079, 3153.
DeVoe Mfg. Co. New York. (Stock)		16: 3076, 3161–2.
Imperial Refinery, Oil City. (Stock of limited partnership).		"A large modern refinery * * accessible for shipping." 16: 3078, 3164. 19:887–8
Warden, Frew & Lockhart properties. Atlantic Ref. Co., Philadelphia. Standard Oil Co. Model Oil Co. Nonpareil Refy. Brilliant Refy. Pittsburg. (Stock and property)		Five refineries owned and apparently operated as one property. All acquired in a single purchase. 16: 3167; 19: 887–8. Purchased "their refineries and business, docks, and canning establishment in Philadelphia and Pittsburg." 16: 3081–2.
1875.		
J. N. Camden & Co. Poole Refinery. Parkersburg (Refineries)		Two refineries controlled by Camden & Co. Purchased in one transaction. 16: 3091–2.
	1875.	
	Bennett, Warner & Co. Titusville. (Property)	"Refined oil at Titusville." "We purchased the properties." 16: 3083, 3169; 17: 3342, 3344.
Porter, Mooreland & Co. Titusville. (Property)		do
	R. H. Lee. John Jackson. Octave Oil Co. Easterly & Davis (Refineries)	Refineries at Titusville purchased by Acme Oil Co. 6: 3240.

Acquired with stock of Standard Oil Co. of Ohio.	Purchased for cash.	
Name and What acquired.	Name and What purchased.	Authorities and Remarks.
	1875.	
	Central Refining Co. Pittsburg. (Stock)	"Refinery in Pittsburg." 17: 3269; Minority interest acquired with trust certificates in 1882 7: 423.
	Comfort, Pickering & Chambers, Titusville. (Refinery)	"Purchased the refinery * * * at Titusville." 17: 3272. Majority stock of new company for cash. See Keystone Ref. Co., 19: 678; Minority interests acquired with trust certificates. 7: 423.
	1877.	
	Carter, Windsor &Co. Maverick Oil Wks. Kidder, Vaughn & Co.	Controlled by single competing interest. Acquired in single transaction. 17: 3272, 3357; Minority interests acquired with trust certificates. 7: 423.
	Sone & Fleming Mfg. Co., New York. (Entire stock)	"A large refinery on Newtown Creek. 16: 3086. 16: 3089; 19: 675.
	Philadelphia Ref. Co., Philadelphia. (Entire stock)	"A refinery at Philadelphia." 16: 3086. 16: 3088-9.
	Producers' Consolidated Land & Petroleum Co. Bayonne. (Stock-Majority in 1877-9; balance in 1896)	Refinery at Bayonne and Production in Penn. 16: 3213; 19: 679.
	C. West & Sons. Robt. Reed & Co. Jas. C. Christopher, Baltimore.	Refineries at Baltimore. 5: 2303-4; Majority stock of new company for cash. See Baltimore United Oil Co. 19: 752; 19: 676. Minority stock new company acquired with trust certificates. 7: 423.

Acquired with stock of Standard Oil Co. of Ohio.	Purchased for cash.	Authorities and Remarks.
Name and What acquired.	Name and What purchased.	
	1877.	
	Geo. Harmel. Harry Reed. Mrs. S. C. Hunt. J. Parkhurst. Merritt, Jones & Co., Baltimore. (Refineries)	do
	Mica Axle Grease Co.	Lubricating oil plants at Cleveland. 16: 3084. 17: 3466.
	Am. Lub. Oil Co. Cleveland.	Majority stock of New Company—for cash—minority with trust certificates. 7: 423. Non-competitive.
	Portland Kerosene Oil Co.	*Non-competing.* Bought supplies from S. O. interests prior to acquisition. 17: 3364, 3278. Minority interest for cash—majority interest with trust certificates. 7: 423.
	1878.	
	Paine, Ablett & Co.	"Acquired the Paine & Ablett Refinery at Smith's Ferry" 17: 3262.
	Smith's Ferry Oil Trans. Co. (Refinery and local pipe line)	The pipe line was owned by Paine, Ablett & Co. and was adjunct to their refinery, with which it was bought. 17: 3263; 19: 674-5.
	Excelsior Refinery, Freedom, Pa.	"Acquired * * the Excelsior Refinery". 17: 3262.
	Eclipse Works. Franklin, Pa.	Lubricating oil plant—Not operating and *non-competitive.* Majority stock of New Company for cash—minority with trust certificates. 17: 3369. 7: 423.
	Citizens Refinery.	"What became of that refinery? * * They sold out to the S. O. Co." 6: 3022.

Acquired with stock of Standard Oil Co. of Ohio.	Purchased for cash.	Authorities and Remarks.
Name and What acquired.	Name and What purchased.	
	1879. *Vacuum Oil Co.* Rochester. (Stock)	Lubricating specialties. *Non-competing.* 17 : 3370–1. 75% stock for cash in 1879; balance for cash in 1900. 19 : 681.
	Diamond Works. Pittsburg. (Refinery)	"Small works at Allegheny. A small refinery" 17 : 3371. Vested in H. C. Vantine & Co. of which 75% bought in 1879 and balance in 1882; all for cash.
	1872–79. Bergen Point Refinery. Wallabout Refinery. Peerless Refinery. Kings Co. Oil Co. N. Y. Harbor.	No evidence that these were ever acquired. If so, they were simply refineries. 6 : 2632.
	Bishop & Heisel. Backus Oil Co. Cleveland.	No competent evidence of purchase of Bishop & Heisel. Nothing but refineries. 16 : 3160–1.
1872–79 Hanna, Chapin & Co. Cleveland (Refinery)		16 : 3160–1
	1872–79 Aladdin Oil Co. and 16 other small refineries at Pittsburg	"Those were the *refineries* that were leased up, bought and controlled by the Standard Oil Co." (Emery) 6 : 2331
Brooks, Ballantyne & Co. Pittsburg (Refinery)		do
	Republic Ref. Co. (Entire stock)	19 : 618 Location not given.
	Star Oil Co. Erie, Pa. (Refinery)	19 : 618.
	Vesta Oil Wks. Brooklyn (Refinery)	"It was a refinery * * * located in Brooklyn. Its business was here (N. Y)" 17 : 3397 Minority interests acquired with trust certificates. 7 : 424.

Acquired with Stock of Standard Oil Co. of Ohio.	Purchased for cash.	
Name and What acquired.	Name and What purchased.	Authorities and Remarks.
	1880	
	Gregory Refinery Yennie & Burke Wilson & Anderson McGoey & King A. S. Jenny & Sons New York (Refineries)	"Small refineries at the seaboard." 17:3323; 1:258 No proof that any of them sold outside of New York State.
	Swan & Finch	Compounding and mixing lubricating oils. 17:3395. Minority interest acquired for trust certificates 7:427
	Bush & Denslow Mfg. Co. Brooklyn (Entire stock)	Refinery at Brooklyn. "Selling their oil where? A. I do not know." 17:3358 ½ in1880, ½ in 1892. All for cash.
	Empire Ref. Co. Newtown Creek (Entire stock)	"Refinery on Newtown Creek. * * * selling its products." 17:3369 80% in 1880 20% in 1891 All for cash 17:3369–70
	Solar Oil Co. Williamsport Pa. (Entire stock)	"Small refinery at Williamsport," 17:3354–5. 19:675.
	Bush & Co., Philadelphia (Entire stock)	"Compounding and marketing business in Philadelphia." 17:3352. 19:673
	1882	
	Atlas Ref. Co. Buffalo. (Stock)	"A refining business." 17:3396 19:644 Minority interests acquired with trust certificates. 7:424
	Union Refining Co. Oil City (Entire stock)	Refinery at Oil City. 19:644 Minority interests acquired with trust certificates. 7:424

Acquired with Trust Certificates.	Purchased for cash.	Authorities and Remarks.
Name and What acquired.	Name and What purchased.	
	1883 Central Ref. Co. New York (Stock)	"A small refinery on Newtown Creek" 17:3397 No proof of selling out of state. Minority stock purchased 1900. 19:644
	Dangler Ref. Co. and 4 other small refineries at Cleveland.	Refineries at Cleveland "taken over" by Standard. 6:3028–9
	1886 Empire Oil Wks., Holdship & Irwin, Pittsburg Pipe Line. Pittsburg (Property)	Two refineries and a local pipe-line adjunct to refineries and belonging to their owners. Bought together. 6:3014, 3133
	1887 Logan, Emery & Weaver, Philadelphia (Refinery)	Refinery sold without business for cash. 6:2767–8
1887 Globe Ref. Co. of Philadelphia. Globe Ref. Co. of Pittsburg Western & Atlantic Pipe Line		Two refineries and local pipe-line adjunct to one of them. All owned by Reighard and sold in one transaction for a single price. 6:3133–6. 7:426
	1893 Borne, Scrymser & Co. New York (Business and property)	Compounding and marketing lubricating oil. 19:633
	1895 Union Ref. Co. Titusville	Refineries at Titusville. 6:2842–3. 17:3352.
	Mutual Oil Works Reno, Pa.	Small refinery 6:2842. Value $1186.30 8:520
	International Refinery. Titusville	Small refinery. 6:2842

Acquired with Trust Certificates.	Purchased for cash.	
Name and What acquired.	Name and What purchased.	Authorities and Remarks.
	1898	
	Argand Refining Co. Marietta (Entire stock)	"Small refinery" 17:3337
	1899	
	Indiana Pipe Line & Ref. Co. Kankakee, Ill (Refinery)	Refinery partially constructed. 17:3310
	Climax Oil Co. Titusville	Refinery. 8:522
	Manhattan Oil Co. Galatea, O.	Refinery only. 17:3337
	1900	
	Pacific Coast Oil Co. California (Entire stock)	Refinery, local pipe-line and crude oil production, all within State of California 17:3391, 3405
	Relief Oil works Franklin (Refinery)	Refinery bought for $15,024. by At. Ref. Co. 8:524
	1901	
	Scofield, Shurmer & Teagle Cleveland (Property)	Purchased for cash and taken over by Republic Oil Co. organized for that purpose. 19:650
	Oil Creek Refinery Ellis & Cummings Refinery	Refineries only. 8:528–30
	1902	
	Leader Ref. Co. Taylorstown, Pa.	Refinery. 8:534 Value $9,480.95.
	No date	
	Pierce and Canterbury Boston	Refinery. 12:718

REFINERIES

Part II.

Companies a majority of whose stock was purchased for cash, the minority stock being still outstanding in 1906.

Names	Authorities and Remarks
1879	
Signal Oil Works *Galena Oil Works*, Franklin, Pa.	Patented lubricating specialties. *Non competing.* 17:3366–67. Operated a one business and acquired in one transaction. 17:3366.
1881	
Chesebrough Mfg. Co. New York (Stock)	*Non-competing.* M'f'g. vaseline. 17:3359.
1895	
Pennsylvania Lubricating Co. (Stock)	*Non-competing.* M'f'g. only mill greases. 19:634.

MARKETING CONCERNS.

Part I.

Those Acquired Otherwise Than Entirely for Cash.

All business done within single state.	Name and What Acquired.	New company organized to take over business.	Remarks.
	1878		
No	Waters-Pierce & Co., St. Louis. (Property)	Yes	Minority interest still outstanding. 19:681; 17:3279.
No	Alex. McDonald & Co., Cincinnati. (Property)	Yes Consol. Tank Line	7:423. 19:677; 17:3360. Minority interest acquired April 12, 1890, with trust certificates.
No	Thompson, Bedford & Co., New York. (Property)	Yes Thompson, Bedford Co. Ltd	7:423. 19:679. Minority interest acquired 1890 with trust certificates.
	1880		
No	Hamilton & Miller, Cincinnati. (Property)	Yes Inland Oil Co.	Minority interest acquired 1901 for cash. 19:677.
	1888		
No	West Michigan Oil Co. (Stock)		"Marketing business in West Michigan." 19:647. 7:426. Partly acquired with trust certificates.
	1890		
Yes	N. J. Oil Co., Newark. (Stock)	No	"Local marketing business in Newark, N. J." 19:647. 7:426. Small minority acquired with trust certificates.

Part II.

MARKETING CONCERNS PURCHASED ENTIRELY FOR CASH.

All business done within single state.	Names and What acquired.	Remarks.
	1883	
No	P. C. Hanford, Chicago (Property)	Property taken over by P. C. Hanford Oil Co. newly organized. Standard trustees bought a majority of stock 1883 and a minority March 7, 1890,—all for cash. 19:646; 17:3398.
	1885	
No evidence	Lloyd Tevis. (Property)	Small business taken over in exchange for minority interest in Standard Oil Co. of Iowa, which interest in 1892 was purchased for cash. 19:635; 17:3394.
Probably No	Isaac E. Blake, Rocky Mt. States (Property)	Minority stock Continental Oil Co. issued for property. Same bought for cash 1892. 19:634; 17:3390-1
	1886	
No evidence	United Refiners Export Co., Perth Amboy. (Entire stock)	19:647.
	1887	
Yes	Monarch Oil Co., Cincinnati. (Stock)	Marketing business in Cincinnati and vicinity. Total stock bought in 1887 and 1890. 19:646.
Yes	Globe Oil Co., Minneapolis (Entire stock)	"Marketing business in Minneapolis" 19:647.
	1888	
Yes	Chester Oil Co., Minnesota. (Entire stock)	"Local marketing business in Minnesota" 19:646.
	1889	
Yes	Mehlen's Family Oil Co. Ltd., L. I. City. (Entire stock)	"Local marketing business at Long Island City and vicinity." 19:646.
	White's Golden Lubricator Co., Cincinnati (Entire stock)	"Marketing business. Headquarters at Cincinnati." 19:647.
	1890	
Yes	Underhay & Co., Boston (Property)	"Marketing business in Boston" 19:637.
Yes	Blodgett-Moore Co., Augusta, Ga. (Property)	Small marketing business in Georgia. Evidence as to acquisition only hearsay. Vol. 5:3166.

All business done within single state.	Names and What acquired.	Remarks.
	1890	
Uncertain	DesMoines Oil Tank Co. Des Moines (Entire Stock)	19:646; 2:959.
Yes	Electric Light Oil Co., Philadelphia (Entire stock)	"Local Marketing business in Philadelphia" selling to consumers. 19:646; 2:850.
	1891	
Yes	L. D. Mix Oil Co., Cleveland (Stock)	"Local marketing business in Cleveland buying supplies from Standard Oil Co."; ninety-five shares bought for cash. Company liquidated 1891. 19:647.
	1892	
Yes	Excelsior Oil Co., Kansas (Property)	Local marketing concern at several points in Kansas. 3:1242–3.
Yes	Sutton Bros., Kansas City (Property)	Local peddling business in Kansas City 3:1242–3.
	1895	
Yes	Oakdale Oil Works, Philadelphia (Property)	Local marketing concern. 2:851
Yes	Nicolai Bros., Washn. D. C. (Property)	Small local marketing concern in the City of Washington. 13:1195.
	1897	
Yes	New American Oil Co., Ohio (Property)	Marketing concern at several Ohio points. 6:3037, 3046–7.
	1898	
No	Commercial Oil Co., Atlanta (Property)	5:2098–9
Yes	Peoples Oil Co., Atlanta (Property)	Local marketing Co. 5:2095–6
	1899	
Yes	Cassetty Oil Co., Nashville. (Property)	Marketing concern in Tennessee. 12:951.
Yes	Protection Oil Co. Cincinnati (Property)	Marketing concern in Cincinnati only. 2:716
	1899	
No	Paragon Oil Co., Columbus (Property)	Peddling concern in various Cities in Ohio and Kentucky. 6:3809.

All business done within single State.	Names and What acquired.	Remarks.
	1899	
Yes	C. P. Wagner & Co., (Property)	Small local marketing concern. 2:718 Value $724.95. 7:510.
No	Dixie Oil Co., Southern Points (Property)	2:725–6.
Yes	Southern Oil Co., Richmond, Va.	Local marketing Company in Richmond. 5:2358.
	1900	
Yes	Vincennes Oil Co., Vincennes, Ind. (Property)	Small local marketing concern in Vincennes. 2:721.
Yes	International Oil Works St. Louis. (Property)	Apparently local marketing concern. 3:1113.
	1901	
Yes	Central Refining Co., Brazil, Ind. (Property)	Small local marketing concern in Brazil, Ind. 5:2516.
Yes	Crawfordsville Oil Co., Crawfordsville, Ind. (Property)	Local marketing concern in Crawfordsville and vicinity. 5:2515.
	1902	
Yes	Toledo Oil Works, Toledo, O. (Property)	Did no business prior to purchase. 6:3052.
Yes	Independent Oil Co., Washington, D. C. (Property)	No evidence of purchase except hearsay. Local marketing concern in City of Washington. 13:1192.
Yes	F. P. Joyce Oil Delivery San Francisco (Property)	Small marketing concern in San Francisco only. 2:743–4.
Yes	Consumers Oil Co., Macon, Ga. (Property)	Local marketing company at Macon, Ga., consisting of a few peddling wagons. 2:725.
Yes	Denlinger Bros., Pittsburg (Entire stock)	"Marketing business" in Pittsburg. 19:650.
	1904	
Yes	Southeastern Oil Co., Atlanta (Property)	"Marketing Company at Atlanta." 2:720.
Yes	Alabama Oil Co., Birmingham. (Property)	Marketing concern at Birmingham. 2:721.

All business done within single State.	Names and What acquired.	Remarks.
	1904	
Yes	King-Keystone Oil Co., San Francisco (Property)	Wholesale business in California. Refined oil business bought; vendor company continued lubricating business as independent. 2:742–3.
Yes	Arctic Oil Works, Pacific Coast (Property)	Whale and sperm oil business with small refined oil department. Refined plant sold to Standard Oil (Iowa) Company continued other business. 2:741–2.
Yes	C. F. Warner (Property)	"Peddling concern" 2:720, Value $995. 8:522.
Yes	Star Oil Co., Cincinnati (Property)	Marketing concern with single plant in Cincinnati. 2:719. Value $2085. 7:511.
	1905	
Yes	Memphis Oil Co., Memphis (Property)	Small local marketing concern in Memphis. 2:723.
Yes	Southern Oil Tank Line, Louisville (Property)	Local marketing concern in Louisville. 2:715.
Yes	Eastern Oil and Gasolene Supply, Boston (Property)	"Retail concern in Boston. 12:721.
	No date	
Yes	Penn Oil Co., Los Angeles (Property)	Small retail business at Los Angeles buying supplies from Standard Oil Co. (Iowa). 2:743.
Yes	Brooks Oil Co., Indianapolis (Property)	Small marketing concern at Indianapolis Practically out of business when purchased. 2:720.
Yes	Illinois Oil Co., Joliet, Ill. (Property)	Local marketing concern in Joliet. 2:756.
Yes	Mutual Oil Co., Dayton, O. (Property)	Local marketing corcern at Dayton. 2:716.
Uncertain	Peuss Oil Co., Baltimore (Property)	Small peddling concern in Baltimore. and Washington. 5:2367.
Yes	Liberty Oil Co., Boston (Property)	Local marketing company. No evidence except hearsay of its purchase. 3:1511–12.
Yes	Funke Bros., Brooklyn (Property)	"Sold to general retail trade" in Brooklyn. 3:1511.

PIPE LINE COMPANIES.

Name	Bought with stock.	Bought for cash.	Remarks.
1874			
American Transfer Co.	Yes. S. O. Ohio.		16:3175. Small line about 8 miles long.
United Pipe Lines Partnership (one-third interest)		Yes.	16:3092, 3323
1877			
Columbia Conduit Co.		Yes.	6:3015, 3322. 6:3326–7. Ran from wells to refineries, all within State of Pennsylvania.
Oil City Pipe Co. Keystone Pipe Co. Milton Pipe Line Sandy Pipe Co. Relief Pipe Line Grant Pipe Line Union Pipe Co. Antwerp Pipe Co. Clarion Pipe Line Hunter & Cummings	Some of these perhaps paid for with stock of United Pipe Lines (corporation)		6:3321, 3322. Group of very small gathering lines, aggregating less than 200 miles in length all entirely within State of Penn. Def. Ex. 260. (Map, not printed.)
1877			
Karns Pipe Line		Leased by United PipeLines.	6:3321, 3327. Small line about 13 miles long, entirely within State of Pennsylvania. Def. Ex. 260
1879			
Penn. Trans. Co. (Lower division)		Leased by United Pipe Lines	6:3327 Had 7 miles of pipe. Def. Ex. 260.
1881-2			
United Pipe Lines (corporation)			This was a corporation organized by Standard interests to hold all the foregoing, except American Transfer Co. and Columbia Conduit Co. 94% stock acquired by Standard Oil interests prior to 1881 and then sold to Nat. Transit Co. Balance stock bought for cash 1882. Outside interests thus eliminated. 19: 648. 19: 678.
1878			
Smith's Ferry Oil Transportation Co.		Yes	"Small gathering pipe line" running to refinery of Paine, Ablett & Co., by whom it was owned and with whose refinery it was bought. Entirely within State of Pennsylvania. 17:3262.

Name.	Bought with stock.	Bought for cash.	Remarks.
1879 Franklin Pipe Co.		Yes Small minority.	Only 195 out of 500 shares of stock ever bought. Balance still outstanding. "Small gathering lines in Western Pa." 19:680.
1886 Pittsburg Pipe Line		Yes	Three small pipes aggregating not over 44 miles long, chiefly supplying refineries with which it was bought. 6:3019,-20; 3132-3.
1890 Western & Atlantic Pipe Line Co. (Minority stock)	Trust certificates.		Small gathering line entirely in State of Penn. owned by Globe Refining Co. of Pittsburg with whose refinery 45 per cent. of its stock was bought. 6:3184, 17:3331 19:648
1895 Mellen Pipe Line		Yes	Gathering lines in West Va. and Penn. 17:3325
Crescent Pipe Line		Yes	Line entirely within State of Penna. 17:3325
Indiana Pipe Line & Refining Co.		Yes	Small gathering line, entirely within State of Indiana. 2:582-3, 17:3310.

APPENDIX II.

1. LIST OF 39 STATIONS IN THE ROCKY MOUNTAIN REGION WITH MARGINS AND POPULATIONS. (SEE BRIEF, VOL. II, p. 142).

Town.	Margin, Per Gallon.	Population.
Albuquerque, New Mexico	6.48c.	6,238
Roswell, " "	5.30	2,049
Socorro, " "	6.22	1,512
Santa Fe " "	7.12	5,603
Billings, Montana	6.28	3,221
Dillon, "	5.78	1,530
Glendive, "	3.40	1,435
Kalispell, "	5.78	2,526
Miles City, "	3.70	1,938
Newcastle, Wyoming	3.69	756
Red Lodge, Montana	5.23	2,152
Sheridan, "	5.28	581
Douglas, Wyoming	4.49	734
Rock Springs, Wyoming	6.21	4,363
Breckenridge, Colorado	6.53	976
Delta, "	7.21	819
Grand Junction, "	6.89	3,503
Montrose, "	7.21	1,217
Salida, "	6.32	3,722
La Junta, "	4.84	2,513
Rocky Ford, "	4.84	2,018
Walsenburg, "	4.64	1,033
Logan, Utah	3.69	5,451
Brigham City, Utah	4.27	2,859
Eureka "	4.86	3,085
Heber City, "	4.46	1,534
Mount Pleasant, Utah	3.69	2,372
Murray, Utah	4.46	3,302
Payson, "	4.14	2,636
Richfield, Utah	3.86	1,969
Preston, Idaho	3.69	1,574
Colorado City, Colorado	3.60	2,914
Eaton, Colorado	3.89	384
Fort Lupton, Colorado	4.40	214
(?) Florence, "	4.20	3,728
Greeley, Colorado	3.96	3,023
Loveland, "	3.76	1,091
Sterling, "	3.57	998
Windsor, "	3.70	305

2. List of 11 stations on the Pacific Coast with margins and populations (See Brief, vol. II., p. 142).

Town.	Margin.	Population.
Woodland, California	2.65c.	2,886
Chico, California	2.85	2,640
Pajaro, "	2.99	1,742
Merced, "	3.80	1,969
Salem, Oregon	3.81	4,258
Albany, Oregon	4.12	3,149
The Dalles, Oregon	4.32	3,542
Eugene, Oregon	4.39	3,236
Roseburg, Oregon	5.27	1,690
Aberdeen, Washington	4.53	3,747
Pullman, Washington	7.60	1,308

3. 51 stations in the United States in towns having populations less than 3,000. (See Brief, vol. II, p. 143).

The following 4 towns, in October, 1904, had margins over 2.60 cents and a population of 500 or less.

Town.	Margin.	Population.
Fairfax, S. C.	3.42	301
McCracken, Kansas	3.57	310
Plainville, Kansas	3.68	378
Millen, Ga.	3.01	411

The following 10 towns, in October, 1904, had margins over 2.60 cents and a population from 500 to 1,000.

Town.	Margin.	Population.
Vidalia, Ga.	3.51	503
Collinsville, Ala.	3.26	534
Eskridge, Kansas	2.66	612
Wadley, Ga.	3.26	630
Grodan, S. D.	2.77	700
Leesburg, Fla.	4.19	765
Cottonwood Falls, Kansas	2.66	842
Quincy, Fla.	4.19	847
Oberlin, Kansas	2.89	937
Stark, Fla.	4.46	972

The following 19 towns, in October, 1904, had margins over 2.60 cents and a population from 1,000 to 2,000:

Town.	Margin.	Population.
Redfield, S. D.	2.77	1,015
Stafford, Kansas	2.71	1,068
Tazewell, Va.	2.74	1,096
Kissimee, Fla.	4.00	1,132
Hays City, Kansas	2.87	1,136

Town.	Margin.	Population.
Florence, Kansas	2.85	1,178
Anthony, Kansas	3.21	1,179
McKenzie, Tenn.	2.95	1,266
Abingdon, Va.	2.85	1,306
Mt. Kisco, N. Y.	2.93	1,346
Brewton, Ala.	3.18	1,382
Larned, Kansas	2.70	1,583
Jasper, Ala.	3.44	1,661
Miami, Fla.	3.47	1,681
Daytona, Fla.	3.83	1,690
Marion, Ala.	3.23	1,698
South Pittsburg, Tenn.	2.89	1,789
Morgantown, N. C.	2.79	1,938
Lebanon, Tenn.	3.24	1,956

The following 18 towns, in October, 1904, had margins over 2.60 cents and a population from 2,000 to 3,000.

Town.	Margin.	Population.
Sterling, Kansas	2.90	2,002
Port Jefferson, N. Y.	2.87	2,026
Tracy City, Tenn.	3.06	2,130
Flemington, N. J.	3.02	2,145
Franklin, Tenn.	2.80	2,180
Bermidji, Minn.	2.90	2,183
Moultrie, Ga.	3.14	2,221
Shelbyville, Tenn.	2.65	2,236
St. Ignace, Mich.	2.83	2,271
Greensboro, Ala.	2.98	2,416
Summerville, S. C.	3.43	2,420
Great Bend, Kansas	2.96	2,470
Orlando, Fla.	3.57	2,481
Demopolis, Ala.	3.45	2,606
Union Springs, Ala.	2.73	2,634
Cresco, Iowa	2.85	2,806
McPherson, Kansas	2.66	2,996
Hollidaysburg, Penna.	2.86	2,998

APPENDIX III.

Defendants' Exhibit 277.

(Record, Vol. 19, p. 662.)

COMPETITIVE REFINERIES IN 1906.

NEW YORK HARBOR.

Columbia Oil Co., Constable Hook, N. J.
Valvoline Oil Co., Edgewater, N. J.

PHILADELPHIA.

Manufacturers' Paraffine Co., Phila. Pa. (formerly Paragon Oil Co.)
Enterprise Oil Works, Phila., Pa.
Sunlight Oil & Refining Co., Phila., Pa.
Pure Oil Co., Marcus Hook, Pa.
National Refining Co., Marcus Hook, Pa.
Sun Company, Marcus Hook, Pa.
Crew-Levick & Co., Marcus Hook, Pa.

PITTSBURGH, PA., AND VICINITY.

Beaver Refining Co., Washington, Pa.
Canfield Oil Co., Coraopolis, Pa.
Freedom Oil Works, Freedom, Pa.
Island Petroleum Co., Neville Island, Pa.
West Pittsburg Oil Refg. Co., Neville Island, Pa.
Lake Carriers Oil Co., Coraopolis, Pa.
Miller's A. D., Sons Co., Allegheny, Pa.
Pittsburgh Oil Refining Co., Coraopolis, Pa.
Waverly Oil Works, Pittsburg, Pa.

OTHER OIL REGION POINTS.

American Oil Works, Titusville, Pa.
Cold Water Oil Co., Raymilton, Pa.
Conewango Refining Co., Warren, Pa.
Continental Refining Co., Oil City, Pa.
Cornplanter Refining Co., Warren, Pa.
Crystal Oil Works, Oil City, Pa.
Dougherty, W. H., & Sons, Petrolia, Pa.
Emery Mfg. Co., Bradford, Pa.
Emlenton Refining Co., Emlenton, Pa.
Empire Oil Works, Oil City, Pa.
Franklin & Raymilton Refining Co., Raymilton, Pa.
Germania Refining Co., Oil City, Pa.
Glade Oil Works, Warren, Pa.
Independent Refining Co., Oil City, Pa.
Levi Smith, Clarendon, Pa.
Penn Lubricating Co., Bradford, Pa.
Penna. Refining Co., Karns City, Pa.
Penn Refining Co., Oil City, Pa.

COMPETITIVE REFINERIES—(*Continued*).

Penna. Paraffine Works, Titusville, Pa.
Seneca Oil Works, Warren, Pa.
Superior Oil Works, Warren, Pa.
Tiona Refining Co., Clarendon, Pa.
Titusville Oil Works, Titusville, Pa.
United Refining Co., Struthers, Pa.
Valvoline Oil Co., East Butler, Pa.
Warren Refining Co., Warren, Pa.
Wellsville Refining Co., Wellsville, N. Y.
Wilburine Oil Works, Warren, Pa.

OHIO.

National Refining Co., Marietta, O.
Sterling Oil Works, Marietta, O.
National Refining Co., Cleveland, O.
Craig Oil Co., Toledo, O.
Canfield Oil Co., Findlay, O. (purchased by National Refining Co.).
National Refining Co., Findlay, O.
Paragon Refining Co., Toledo, O.
Wyandot Refineries Co., Crawford, O. (formerly Wyandot Producing & Refg. Co.).
Sun Oil Co., Toledo., O.

KANSAS.

Caney Refining Co., Caney, Kas.
Chanute Austin Refining Co., Chanute, Kas.
Eastern Kansas Oil Refinery, Moran, Kas.
Great Western Oil Refining Co., Erie, Kas.
Kansas & Texas Oil, Gas & Pipe Line Co., Chanute, Kas.
Kansas City Oil Co., Kansas City, Kas. (formerly Kansas City Oil & Gas Co.)
Kansas Co-Operative Refining Co., Chanute, Kas.
Kansas Crude Oil & Gas Co., Chanute, Kas.
Kansas Oil Refining Co., Chanute, Kas.
National Refining Co., Coffeyville, Kas.
Paola Refining Co., Paola, Kas.
Petrolia Refining Co., Petrolia, Kas.
Rollin Refining Co., Rollin, Kas.
Standard Asphalt & Rubber Co., Independence, Kansas.
Sunflower Oil Co., Niotaze, Kas.
Superior Refining Co., Longton, Kas.
Uncle Sam Oil Co., Atchison, Kas.
Uncle Sam Oil Co., Cherryvale, Kas.
Webster Refining Co., Humboldt, Kas.

OKLAHOMA.

Chelsea Refining Co., Chelsea, Okla.
Muskogee Oil Refining Co., Muskogee, Okla.
Oklahoma Refining Co., Oklahoma City, Okla.
Tulsa Refining Co., Tulsa, Okla.
Uncle Sam Oil Co., Tulsa, Okla.
Webster Refining Co., Okmulgee, Okla.

ILLINOIS.

Leader Oil Co., Casey, Ill. (Cornplanter Refg. Co.)
Mid-Continent Oil Refg. Co., E. St. Louis, Ill.
Robinson Oil Refining Co., Robinson, Ill.
Union Oil Co., East St. Louis, Ill.

COMPETITIVE REFINERIES—(*Continued*).

KENTUCKY.

Indian Oil Refining Co., Georgetown, Ky.

COLORADO.

Boulder Refinery, Boulder, Colo.
Colorado Refining & Oil Co., Boulder, Colo.

WYOMING.

Pittsburg-Salt Lake Oil Co., Spring Valley, Wym.

CALIFORNIA:

Alameda County.

Capitol Refining Co., Stockyards, Cal.
Pacific States Refineries, Fruitvale.
Paraffine Paint Co., Oakland.

Contra Costa County.

Western Oil Refg. & Mfg. Co., Rodeo.
Union Oil Co. of California, Oleum.

Fresno County.

California Fresno Oil Co., Fresno.

Kern County.

Buckeye Refg. Co. Kern River Field (formerly Clark Oil Refg. Co.).
Sunset Oil & Refg. Co., Sunset Field.

Los Angeles County.

Asphaltum & Oil Refg. Co., Los Angeles.
Atlas Refining Co., Los Angeles (formerly 2 refineries: New Franklin Oil Co. and Atlas Reduction Co.)
British California Oil Co., Los Angeles.
Densmore Stabler Refg. Co., Los Angeles.
Hercules Oil Co., Los Angeles.
Jordan Refining Co., Los Angeles (formerly Meridian Oil Co.).
Los Angeles Refg. Co., Los Angeles.
Southern Refining Co., Los Angeles.
Sunset Oil & Refg. Co., Obispo.
Union Consolidated Oil Co., Los Angeles.

San Bernardino County.

Puente Oil Co., Chino.

San Luis Obispo County.

California Petroleum Refineries, Oilport.

Santa Barbara County.

Associated Oil Co., Alcatraz (formerly Alcatraz Asphalt Co.).

COMPETITIVE REFINERIES—(*Continued*).

Ventura County.

Santa Paula Oil Co., Santa Paula.

TEXAS.

Central Asphalt Works, Port Neches, Tex. (sometimes known as Evangeline Oil Co., taken over by Texas Co.).
United Oil & Refining Co., Beaumont, Tex. (formerly National Refining Co., U. S. Oil & Refining Co., Union Oil & Refining Co.).
Higgins Oil & Fuel Co., Beaumont, Tex.
Great Southern Oil Co., Beaumont, Tex. (W. H. Sturman, of N. Y., receiver).
San Jacinto Oil Ref. & Tank Car Co., Corsicana, Tex. (leased by Richardson-Gay Oil Co.).
Southwestern Oil Co., Houston Tex.
Gulf Refining Co., Plant No. 2, Port Arthur, Tex.
Gulf Refining Co., Plant No. 3, Port Arthur, Tex.
The Texas Co., Port Arthur, Tex.
Howard Refining Co., Port Arthur, Tex. (formerly the Colonia Ref. Co.).

LOUISIANA.

Jennings Refining Co., Jennings, La. (formerly Union Oil & Refining Co.).
Record Oil Refining Co., Port Chalmette, La.
National Oil Works & Mill Supply Co., New Orleans, La.